

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.11.2019	Delivered on 08.01.2020
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.297 of 2014
and MP No.1 of 2014

D.Vijayalakshmi

..Appellant/Appellant/2nd Defendant

vs.

1. V.Hariselvan

..Respondent/1st Respondent/Plaintiff

2. Anusuya

3. Asokarani

4. Shanmuharani

5. Rangaraju

... Respondents/Respondents 2 to 5/
Defendants 3 to 6

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment of the learned Principal District Judge, Coimbatore dated 13.09.2013 passed in A.S.No.82 of 2012 confirming the decree and judgment of the learned II Additional Subordinate Judge, Coimbatore dated 30.01.2012 passed in O.S.No.1308 of 1998.

For Appellant : Mr. Sharath Chandran
for Mr.Govind Chandrasekar

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

J U D G E M E N T

The second defendant in OS No.1308 of 1998, who suffered a decree for declaration of title of the plaintiff and defendants 3 to 5 and for recovery of possession as against the second defendant has come up with this Second Appeal.

2. Originally the suit was laid by the plaintiff for a declaration that the first defendant had only a life estate and

the plaintiff and defendants 3 to 5 were the reversioners. The first defendant the life estate holder, according to the plaintiff, died pending suit forcing an amendment to the plaint seeking declaration of the title of the plaintiff and defendants 3 to 5 and for recovery of possession from the second defendant, who claimed to be a purchaser from the first defendant.

3. The facts that led to the filing of the suit are as follows:

The suit property belonged to one Patti Chettiar, who had married the first defendant in the 1920's. Though they were blessed with a son, it appears that he died some time in 1932. Thereafter, Patti Chettiar married another Rajammal as his second wife. She died without any issues. Sometime in 1949 precisely on 05.09.1949 Patti Chettiar married one Pappathiammal @ Aavudaiammal, as his third wife. The plaintiff and defendants 3 to 5 are the children of Patti Chettiar, through the third wife Pappathiammal @ Aavudaiammal. Soon after his marriage with Pappathiammal @ Aavudaiammal, Patti Chettiar with an intent to provide for the maintenance of his first wife executed a Settlement Deed on 09.09.1949, settling the suit property in favour of his first wife Rajammal providing a life estate for her and on her death the property was to revert back to Patti Chettiar or his heirs.

4. On 26.06.1950 Rajammal (first wife) issued a notice to Patti Chettiar claiming that he had deceived her. According to her, Patti Chettiar had promised to settle the property absolutely in her favour under Settlement Deed dated 09.09.1949, but however she had been granted only a life estate. On the above claim, Rajammal required Patti Chettiar to execute a rectification deed conferring an absolute estate on her. The said notice was replied to Patti Chettiar on 09.08.1950, wherein, he claimed that the Settlement Deed was executed with the intent of providing maintenance to her. He further claimed that certain amount of cash was also handed over to her on the date of the execution of the settlement Deed. It was his further claim that a sum of Rs.4,000/- was kept in deposit and the interest was directed to be paid to her, for her maintenance. Not satisfied with the reply notice, the said Rajammal, viz., the first defendant in the present suit filed a suit in OS No.52 of 1951 seeking a declaration that she is entitled to the property set out in Schedule 'A' absolutely, direct the first defendant to execute necessary document rectifying the deed of Settlement dated 09.09.1949 and for other reliefs.

5. The said suit was resisted by Patti Chettiar, contending that he intended only to create life estate to favour of his first wife/plaintiff in OS No.52 of 1951, the said suit was dismissed by the learned Subordinate Judge, Coimbatore, on 17.08.1955 as regards the relief of declaration was concerned granting a decree for maintenance and held that the plaintiff (first defendant herein), would be entitled to enjoy the rent from the house described in the plaint Schedule 'A' property (subject matter of the Settlement Deed dated 09.09.1949) and receive the rents. It was also held that she would be entitled to collect the interest from the amount of Rs.4,000/- that was kept in deposit with the second defendant and a further sum of Rs.1,000/- from the first defendant, which should be taken by her absolutely. The plaintiff in OS No.52 of 1951 accepted the said decree and did not choose to challenge the same. However, Patti Chettiar, the first defendant therein, filed an Appeal in AS No.133 of 1956 before this Court. The said Appeal came to be dismissed on 01.07.1959, confirming the judgment and decree of the Trial Court.

6. The only question that was canvassed before this Court was the direction to pay a sum of Rs.1,000/- given by the Sub Court. There was no further proceeding with reference to OS No.52 of 1951. The first defendant/ the settlee under the Settlement Deed dated 09.09.1949, viz. Rajammal sold the property settled on her under the deed of sale dated 05.07.1995 in favour of the second defendant in the present suit/appellant herein. The plaintiff claiming that he is the reversioner under the Settlement Deed dated 09.09.1949 being the son of Patti Chettiar, through his third wife Pappathiammal @ Aavudaiammal filed the above suit in OS No.1308 of 1998 seeking reliefs as aforesaid. Pending the said suit Rajammal died in the year 2000. After the death of Rajammal, the plaint was amended seeking relief of declaration of title and recovery of possession from the second defendant.

7. The sum and substance of the plea of the plaintiff is that the Settlement Deed dated 09.09.1949 provides only a life estate to Rajammal, hence she had no power to alienate the property. Therefore, the sale deed dated 05.07.1995 will not confer any title on the second defendant. According to the plaintiff, the sale deed would be valid only till the life time of the first defendant Rajammal. It was also contended that the Sale deed dated 05.07.1995 having been registered at the Sub Registrar's Office at Olavakkode, Palakad District in Kerala, amounts to fraud on registration and is in violation of Section 28 of the Registration Act. Therefore, according to the

plaintiff, the sale deed dated 05.07.1995 would not confer a valid title on the second defendant. It was also pointed out that a very small extent of land was purchased by Rajammal at Kaduddamkunan Village of Pallakad District in Kerala, on the same date i.e., 05.07.1995 and the said property was also sold along with the suit property to the second defendant.

8. According to the plaintiff, the inclusion of the property situate at Kadukkamkunan Village was made with the mala fide intention of having the document registered at the Office of the Sub Registrar, Olavakkode, which otherwise would not have the power to register a sale deed in respect of property situated in Coimbatore City in Tamil Nadu. On the above contentions, the plaintiffs sought for the reliefs as aforesaid.

9. Rajammal who was alive at the time of institution of the suit filed a written statement contending that the Settlement Deed dated 09.09.1949 gave her absolute right and conditions contained in the document restricting her right are invalid. It was also contended by her that on the introduction of the Hindu Succession Act, 1956, by virtue of Section 14 of the said Act, her limited estate would blossom into an absolute estate since she was possessed of the property on the date when the Act came into force i.e., 17.06.1956. The claim of the plaintiff under the Will dated 09.11.1975, said to have been executed by Patti Chettiyar, was also disputed. Therefore, according to the first defendant, the property became her absolute property on and from the date of coming into force of the Hindu Succession Act, 1956 and as such, she has every right to deal with the property. Rajammal had also affirmed the sale made by her in favour of the second defendant. The second defendant while adopting the written statement of the first defendant, further contended that she is the bona fide purchaser for value. It was also claimed that the suit filed without seeking to set aside the sale executed by Rajammal is not maintainable.

10. A reply statement was filed by the plaintiff reiterating his contentions and claiming that Section 14 (1) and (2) of the Hindu Succession Act, 1956 would not apply since the very document executed by Patti Chettiyar on 09.09.1949 gave her only a life estate. It was further contended that the said life estate given was not in lieu of maintenance, therefore, it would not blossom into an absolute right, even under Section 14(2) of the Hindu Succession Act, 1956.

11. The defendants 3 to 5 filed a written statement accepting the case of the plaintiff. The second defendant filed an additional written statement after the amendment of the plaint was made. Claiming that the suit is barred by limitation and the suit has not been properly valued as it is one for declaration of title to the property.

12. At trial, the plaintiff was examined as P.W.1 and one P.Sampath kumar was examined as P.W.2. The husband of the second defendant G.Selvaraj was examined as D.W.1. Exhibits A1 to A17 were marked on the side of the plaintiff and Exhibits B1 to B11 were marked on the side of the defendants.

13. The learned Subordinate Judge, who tried the suit on a consideration of the evidence on record concluded that in view of explanation 4 to Section 11 of the Code of the Civil Procedure, the first defendant having failed to raise the issue regarding enlargement of her interest in the suit property in the Appeal filed by her against decree in OS No.52 of 1951, viz. AS No.133 of 1956, she would be precluded from now contending that the limited estate granted to her under the Settlement Deed dated 09.09.1949 marked as Ex.A1 would blossom into an absolute estate. It was also found that the first defendant having failed in her attempt to get declaration that Ex.A1, Settlement Deed conveyed an absolute estate in her favour in OS No.52 of 1951 cannot now re-agitate the issue. On the aforesaid finding, the learned Trial Judge rejected the claim of the defendants 1 and 2 that by virtue of Section 14 of the Hindu Succession Act, 1956, the limited estate granted to the first defendant under Ex.A1 dated 09.09.1949, had enlarged into an absolute estate. On the said finding, the learned Trial Judge concluded that the sale made by the first defendant on 05.07.1995 in favour of the second defendant will not be valid after the life-time of the first defendant.

14. On the issue based on Section 28 of the Registration Act, the learned Trial Judge concluded that there was no bar on registration of sale deeds at an office of the Sub Registrar, within whose jurisdiction a small portion of the property is situate and the same was declared null and void only by virtue of introduction of Section 28(b) by virtue of the Tamil Nadu Act 19 of 1997 in the principal Act viz. the Registration Act, 1908.

Therefore, the learned Subordinate Judge rejected the claim of the plaintiff regarding invalidity of the Sale Deed dated 05.07.1995 (marked as Ex.A17) executed by the first defendant in favour of the second defendant. On the aforesaid findings, the learned Trial Judge decreed the suit as prayed for.

15. Aggrieved, the second defendant preferred an appeal in AS No.82 of 2012 on the file of Principal District Judge, Coimbatore. The learned Principal District Judge, Coimbatore, concurred with the findings of the Trial Court on the question of res judicata. He went further found that Ex.A1 Settlement Deed dated 09.09.1949 does not indicate that the property was given to Rajammal in lieu of her maintenance. On the above conclusions, the learned Appellate Judge, confirmed the decree of the Trial Court. He however, did not go into the question of the invalidity of the Sale Deed dated 05.07.1995 projected by the plaintiff based on Section 28 of the Registration Act. Challenging the said judgment and decree of the Lower Appellate Court, the second defendant has come forward with the above Second Appeal.

16. Notice of motion was ordered on 14.03.2014, pursuant to the same, Mr.T.R.Rajaraman, learned counsel had entered appearance for the first respondent.

17. The Second Appeal was admitted on the following substantial question of law on 22.10.2019.

Whether the Courts below were right in not applying Section 14(1) of the Hindu Succession Act and concluding that the limited estate given to the 1st defendant would enlarge into an absolute estate?

18. Upon further hearing of the counsels, the following substantial questions of law were framed on 06.11.2019.

(i) Whether the first appellate court was right in concluding that the defendants' claim is barred by res judicata?

(ii) Whether the Courts below were right in not going into the question of validity of the sale deed, Ex.A17 which is admittedly registered outside the State?

19. I have heard Mr.Sharath Chandran, learned counsel appearing for Mr. Govind Chandrasekhar for the appellant and Mr.T.R.Rajagopalan, learned Senior Counsel appearing for Mr.T.R.Rajaraman, learned counsel for the first respondent/plaintiff. The respondents 2 to 5 though served are not appearing either in person or through counsel duly instructed.

20. Mr.Sharath Chandran, learned counsel appearing for the appellant would contend that the Courts below have committed a manifest error in concluding that the claim of the first

defendant that she had got an absolute right over the property by virtue of Section 14 of the Hindu Succession Act, 1956 is barred by res judicata. Drawing my attention to the suit register extract viz. Ex.A10, Mr.Sharath Chandran would submit that the appeal in AS No.133 of 1956 was not filed by the first defendant Rajammal.

21. In support of his submission, he would rely upon the entry in the suit register extract in Ex.A10, which reads as follows:

"9. First Appeal No.133 of 1956 High Court.

Result with date: 1-7-1959. The decree of the Lower Court is confirmed and the appeal dismissed.

The appellant do pay first respondent Rs.33-25np. for her costs in the appeal."

22. Mr. T.R.Rajagopalan, learned Senior counsel appearing for the first respondent realising the probability of the Appeal in AS No.133 of 1956 having been filed by Patti Chettiar would submit that this Court being a Court of record can always look into the judgment in AS No.133 of 1956 to find out as to who has filed appeal. In view of the said submissions, made by the counsels on the either side, I had required the Registry to put up the judgment in AS No.133 of 1956 dated 01.07.1959. Consequent to the said direction, the Registry has placed the judgment in AS No.133 of 1956 before me. A perusal of the same shows that the Appeal in question, viz. AS No.133 of 1956 was filed by Patti Chettiar and the only challenge was to the decree passed by the Sub Court against Patti Chettiar for payment of Rs.1,000/- to Rajammal by the Trial Court in OS No.52 of 1951.

23. This fact essentially throws open the question of res judicata. Mr.Sharath Chandran, learned counsel appearing for the appellant would vehemently contend that the suit in OS No.52 of 1951 was filed prior to the introduction of the Hindu Succession Act, 1956 and it was decided on 17.08.1955, therefore, the question of raising an issue relating to the limited estate blossoming into an absolute estate at trial did not arise. Rajammal for all practical purposes had accepted the judgment of the Sub Court. It was Patti Chettiar who filed the Appeal in AS No.133 of 1956, questioning that portion of the decree which directed him to pay a sum of Rs.1,000/- to Rajammal. No doubt, the Appeal came to be disposed of in 1959, after the enactment of the Hindu Succession Act, 1956, and Rajammal though appeared through Counsel did not raise the question of the enlargement of the estate in view of Section 14(1) or 14 (2) of the Hindu

Succession Act, 1956, that by itself, according to Mr.Sharath Chanran, would not debar her from claiming the benefits of Section 14 of the Hindu Succession Act. He would further contend that the conclusion of the Lower Appellate Court that the settlement deed dated 09.09.1949 was not executed in favour of Rajammal in lieu of maintenance is against the documentary evidence available on record.

24. The written statement filed by Patti Chettiar in OS No.52 of 1951 was marked as Ex.A7. Mr.Sharath Chandran would draw my attention to the relevant portion of Ex.A7, which reads as follows:

"4. The allegations in para 4 are contrary to facts. The settlement deed dated 09.09.49 was in lieu of maintenance and the said deed speak for itself with regard to the arrangement between the parties."

He would also point out that in the judgment of the Trial Court in OS No.52 of 1951, marked as Ex.A8, the Trial Court has found that the document was executed to provide for maintenance for Rajammal. He would draw my attention to the following portion of the said judgment:

"13. ... He was afraid that the plaintiff would proceed against him for maintenance and in order to avoid it he appears to have voluntarily executed the settlement deed in dispute. The plaintiff at first appears to have been content with the provision made, but later on after obtaining a registration copy of the settlement deed and probably at the instigation of her brother and mother issued the notice on 26.6.1950 to the 1st defendant."

25. Relying upon the aforesaid pleading as well as finding, Mr.Sharath Chandran, would submit that the conclusion of the Lower Appellate Court that the Settlement Deed dated 09.09.1949 was not executed in lieu of maintenance is patently erroneous and is against the evidence of record. Mr.Sharath Chandran, would also further contend that in view of the judgment of the Hon'ble Supreme Court in V.Tulasamma and Others v. Sesha Reddy, reported in (1977) 3 SCC 99, even though the Settlement Deed dated 09.09.1949 (Ex.A1) prescribes a limited estate. The same having been executed in lieu of maintenance or in recognition of the right of maintenance of Rajammal/the first defendant the limited right granted to her would automatically blossom into an

absolute right by virtue of Section 14 of the Hindu Succession Act, 1956. He would also point out that the rejection of the claim of Rajammal in OS No.52 of 1951, would not stand in a way when she claims an absolute right by virtue of Section 14(1) and 14(2).

26. In support of his contention, Mr.Sharath Chandran, would rely upon the judgment of the Hon'ble Supreme Court in Shakuntla Devi v. Kamla and Others, reported in (2005) 5 SCC 390, wherein the Hon'ble Supreme Court had pointed out that a declaratory decree based on the then existing law will not operate as res judicata in a subsequent suit for possession. While considering the scope of such declaratory decrees, the Hon'ble Supreme Court had observed as follows:

"13. As stated above, the learned counsel for the appellant contended that since the two declaratory decrees obtained by them having become final and being a decree inter se between the parties or their successors in interest, the defendants in the present suit could not take a stand contrary to the declaration already obtained by appellant. This argument is obviously based on the principle of res judicata. Ordinarily such an argument ought to be accepted but there are some exceptions in regard to the application of this principle. One such exception would be where the earlier declaration obtained by the court is established to be contrary to an existing law. In Mathura Prasad Bajoo Jaiswal &Ors. vs. Dossibai N.B.Jeejeebhoy, this Court held: (SCC p.618 para 7).

"7. Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties; Tarini Charan Bhattacharjee's case (supra). It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different."

14. It is to be noticed that in the present case when the first declaratory decree was obtained, on the basis of the law as it stood then, the right of Uttamdassi remained a limited right in the suit property. Hence, a declaratory decree was given in favour of the plaintiffs in that suit, but by the time the second declaratory decree was obtained by the appellant herein, this Court by the judgment in V.Thulasamma's case had

declared the law under Section 14 of the Hindu Succession Act holding that the estate of persons similarly situated as Uttamdassi got enlarged and a beneficiary under a Will with limited rights became the absolute owner of the same. Since the judgment of this Court in Tulasamma's case was the law on that date and is the law currently, the second declaratory decree was contrary to the said declaration of law made by this Court. Therefore, that declaration cannot be of any use to the appellant in view of the law laid down by this Court in Mathura Prasad case (supra) as extracted herein above.

15. Apart from the above in the very same case of Mathura Prasad, this Court at para 11 held:

"Where, however, the question is one purely of law and it relates to the jurisdiction of the court or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supercede the law of the land."

16. If we apply the above ratio with which we are in respectful agreement, the consequent result would be that since the two declaratory decrees obtained by the appellant being contrary to law laid down by this Court in Tulasamma's case, it will be open to the defendants as rightly held by the High Court in the impugned judgment to challenge those declarations and avoid the declaratory decree if they succeed in such challenge. In the instant case, in our opinion, the High Court rightly held that the declaratory decrees obtained by the appellant being contrary to the judgment in Tulasamma's case would not be of any assistance to the appellant to obtain the possession of the suit property."

27. The resultant position, according to the learned counsel is that dehors the findings in OS No.52 of 1951, by virtue of the introduction of Section 14 of the Hindu Succession Act, 1956, the right given to Rajammal/the first defendant, under the settlement deed dated 09.09.1949 would blossom into an absolute estate. He would also refer to the position of law that was prevailing in this Court with reference to Section 14(1) and (2)

of the Hindu Succession Amendment Act. In *Thatha Gurunatham Chetty v. Thatha Navaneethamma & others*, reported in AIR 1967 Mad 429, this Court had held that if an instrument of settlement or any other instrument though executed in lieu of maintenance prescribed a limited estate, the same will not enlarge into an absolute estate as such instrument would be governed by Section 14(2) of the Hindu Succession Act and not Section 14(1). However, the Hon'ble Justice K.S.Ramamurthi, examined the same question in *Chellammal v. Nallammal*, reported in (1971) 1 MLJ 439.

28. By that time, the Andhra Pradesh High Court had decided the question in *Vaddapoyina Sesha Reddi v. Vaddapoyina Tulasamma & others*, reported in AIR 1969 AP 300, the view of Andhra Pradesh High Court was in tune with the judgment of Hon'ble Mr. Justice Natesan in *Thatha Gurunatham Chetty v. Thatha Navaneethamma & others*, referred to supra. Hon'ble Mr. Justice Ramamurthi, however, dissented from the view of the Andhra Pradesh High Court expressed in *Vaddapoyina Sesha Reddi v. Vaddapoyina Tulasamma*, referred to supra, and concluded that even in cases where the instrument by which the right is conferred on a Female Hindu prescribes a limited estate, if it is found that she was entitled to a right of maintenance over the property, viz. the pre-existing right, then dehors the restrictions made in the instrument Section 14(1) would apply and the right would blossom into an absolute estate. Soon thereafter, a Division Bench of this Court in *Santhanam Kachapalaya Gurukkal @ Kachapeswara Gurukkal v. Subramania Gurukkal*, reported in Vol 1985 LW 202, considered both the judgments of Hon'ble Mr. Justice Natesan and Hon'ble Mr. Justice Ramamurthi. The Division Bench, however agreed with the view of Justice Natesan and overruled the judgment of Justice Ramamurthi in *Chellammal v. Nallammal*, reported in (1971) 1 MLJ 439.

29. Then came to the judgment of the Hon'ble Supreme Court in *V.Tulasamma and others v. Sesha Reddy*, reported in (1977) 3 SCC 99, wherein, the Hon'ble Supreme Court reversed the judgment of the Andhra Pradesh High Court in *Vaddapoyina Sesha Reddi v. Vaddapoyina Tulasamma & others*, reported in AIR 1969 AP 300. The resultant position is that, even if a document or an instrument or a decree of Court prescribes a limited estate on a Hindu women, if it is proved that she had a pre-existing right of maintenance on the property of the settlor, it is Section 14 (1) that would apply and not Section 14 (2). On the same day it decided *V.Tulasamma and others v. Sesha Reddy*, the Hon'ble Supreme Court also affirmed the judgment of Hon'ble Mr. Justice K.S.Ramamurthi, in *Chellammal v. Nallammal*, reported in (1971) 1 MLJ 439 by referring to *V.Tulasamma and others v. Sesha Reddy*,

the said judgment of the Hon'ble Supreme Court in Sellammal and others v. Nallammal is reported in (1977) 3 SCC 145.

30. Mr.T.R.Rajagopalan, learned Senior Counsel, while accepting the position of law as declared by the Hon'ble Supreme Court in V.Tulasamma and others v. Sesha Reddy, would however, contend that once the Court has decided on the scope of the instrument and refused the declaration in favour of the plaintiff in OS No.52 of 1951, the first defendant who had suffered a decree cannot now seek to claim a right by virtue of Section 14(1) of the Hindu Succession Act. According to him, the filing of OS No.52 of 1951 filed by the first defendant and the decree therein would have the effect of preventing the first defendant from now contending that there is an enlargement of the estate.

31. I have considered the rival submissions.

32. After the authoritative pronouncement of the Hon'ble Supreme Court in V.Tulasamma and others v. Sesha Reddy, there remains no doubt in the position of law to the effect that if a limited estate is granted under an instrument which is a recognition of pre-existing right of maintenance, dehors the fact that the instrument limits the right as Section 14(1) alone would apply and such limited estate would blossom into an absolute estate. Adverting to the finding of the Lower Appellate Court that the Settlement Deed dated 09.09.1949 as Ex.A1, was not executed in recognition of a pre-existing right of maintenance, I must at once point out that the said finding is contrary to the evidence on record. Unfortunately, the attention of the Lower Appellate court was not drawn to Ex.A7, the written statement in OS No.52 of 1951 and Ex.A8, the judgment in OS No.52 of 1951.

33. In the written statement filed in the said suit, the first defendant therein viz. Patti Chettiar had specifically taken a stand that Ex.A1, Settlement Deed was executed in lieu of maintenance. The learned Subordinate Judge, who tried the suit, has also recorded his specific finding to the effect that Ex.A1 Settlement Deed was executed in lieu of maintenance. Therefore, the conclusion of the Lower Appellate Court that Ex.A1 was not executed in lieu of maintenance or in recognition of a pre-existing right of Rajammal cannot be sustained.

34. On the question of res judicata, the Lower Appellate

Court had proceeded on the footing that AS No.133 of 1956 was filed by the first defendant. Now it would turn out that AS No.133 of 1956 was not filed by the first defendant. It was filed by Patti Chettiar, challenging a portion of the decree in OS No.52 of 1951. The judgment of the Trial Court in OS No.52 of 1951 is dated 17.08.1955, i.e. prior to the enactment of Hindu Succession Act 1956. Therefore, there was no occasion for Rajammal to have invoked the benefit of Section 14 of the Hindu Succession Act, during trial.

35. In the Appeal, the said question was not raised or decided. Therefore, I do not think that the findings in OS No.52 of 1951 would operate res judicata against the first defendant in the present suit. There was no declaration of the right of the first defendant after coming into force of the Hindu Succession Act, 1956. All that was there was a rejection of the claim of the first defendant that she is the absolute owner of the property. That rejection was prior to the enactment of the Hindu Succession Act, 1956. There is a change in the substantive law after the coming into force of the Hindu Succession Act, 1956. Therefore, the Courts below were not right in concluding that the failure on the part of the first defendant to have raised the issue relating to enlargement of estate in the proceeding in OS No.52 of 1951 would prevent her from raising issue in the subsequent suit for possession.

36. As rightly contended by Sharath chandran, the judgement of the Hon'ble Supreme Court in Shakuntla Devi v. Kamla and Others, reported in (2005) 5 SCC 390, referred to supra, seals the issue in favour of the appellant. I have already extracted the relevant portion of the said judgment which would go to show that a declaratory decree will be subject to any change in law.

37. The following observation of the Hon'ble Supreme Court in Mathura Prasad Bajoo & Ors. vs. Dossibai N.B.Jeebhoy,

"7. Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties; Tarini Charan Bhattacharjee's case (supra). It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different."

would make it clear that if there is a change in law a

declaratory decree cannot be projected as a bar on the ground of res judicata.

38. In the case on hand, there is not even a change in the interpretation of law but a substantive law has been enacted conferring an absolute right on a Hindu female, who got a limited right by virtue of then existing law. I am therefore of the considered opinion, that the Courts below were not right in concluding that the suit is barred by res judicata. The first defendant, cannot be prevented by the principles of res judicata from raising the issue relating to the blossoming of limited estate into an absolute estate.

39. In view of the judgment of the Hon'ble Supreme Court in V.Tulasamma and others v. Sessa Reddy, referred to supra, the limited right given to the first defendant under the Settlement Deed dated 09.09.1949 would blossom into an absolute estate.

40. In view of the above, the question of law framed on 22.10.2019 and the first additional question of law framed on 06.11.2019 are answered in favour of the appellant.

41. This leaves us with the second additional question of law framed on 06.11.2019. The same is based on Section 28 of the Registration Act. The property subject matter of the suit is situate at Coimbatore in Tamil Nadu. The sale deed executed by Rajammal/the first defendant in favour of the second defendant dated 05.07.1995 has been registered in the office of the Sub Registrar, Olavakodu, Palakadu Taluk of Kerala state, by including an extent of one cent of land in Kerala, which was purchased by the first defendant under another Sale Deed dated 05.07.1995, which was registered a few minutes prior to the Sale Deed relating to the suit property marked as Ex.B9.

42. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the first respondent would vehemently contend that the Registration of Ex.B9 at Kerala would amount to fraud on registration and hence the sale deed would not confer any title on the second defendant. According to the learned Senior Counsel, though Section 28 of the Registration Act, as it stood prior to the introduction of Section 28(b) of the said Act, enabled registration of documents with reference to properties situate within the jurisdiction of two different Registering Authorities, in any one of such Registering Authorities, the Courts have always taken the view that such registration can be

made only if it is bona fide. Before going into the question of invalidity of the transaction the Court has to find out whether such registration is bona fide or not. If the Court finds that such registration is not a bona fide transaction or it was made in order to defeat any of the provisions of the statute then the said transaction will not be valid and the registration of such document will not confer valid title on the purchaser. Though this question was raised before the Trial Court, the learned Subordinate Judge concluded that prior to the introduction of Section 28 (b) of the Registration Act, the Act itself enabled registration of document before any one of the Registering Authorities and hence the document cannot be held to be invalid.

It does not appear from the judgment that the question relating to fraud on registration was projected very seriously before the learned Subordinate Judge.

43. The learned Principal District Judge who dealt with the Appeal, however, did not choose to go into the question, as he decided the first issue relating to enlargement of estate of Rajammal against the appellant. While Mr.T.R.Rajagopalan, learned Senior Counsel would contend that the Registration of Ex.B9 Sale Deed at Olavakkode, Palakad Taluk in Kerala, by including a small property measuring about one cent which was purchased by Rajammal on the same day under Ex.A.17 would demonstrate that the registration of Ex.B9 is a fraud on registration.

44. He would also draw my attention to the judgment of the Privy Council in Harendra Lal Roy Chowdhuri v. Haridasi Debi, reported in ILR 41 Cal 972, wherein the Privy Council concluded that Section 28 of the Registration Act, does not enable registration of documents within the jurisdiction of Registering Authority within whose jurisdiction no portion of the mortgaged property was situate. On facts, in Harendra Lal Roy Chowdhuri's case, it was found that the property that was described to be situate in Calcutta was non-existent. In the said context, the Privy Council held that the registration of a document at a place where no portion of the property was situate will defeat the provisions of the Registration Act and hence such a document cannot be valid. While concluding the Privy Council had observed as follows:

"But the point may be put in another way upon broader grounds. Their Lordships hold that this parcel is in fact a fictitious entry, and represents no property that the mortgagor possessed or intended to mortgage, or that the mortgagee intended to form part of his security. Such an entry intentionally made use of by the

parties for the purpose of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact exists, is a fraud on the Registration law, and no registration obtained by means thereof is valid. To hold otherwise would amount to saying that mortgages relating solely to land in other parts of the Presidency could be validly registered by the Sub-Registrar at Calcutta if the parties merely took the precaution to add as a last parcel, Government House, Calcutta, or any similar item. The same considerations apply to the question of jurisdiction of the High Court of Fort William in Bengal in its ordinary original jurisdiction. No such fictitious item inserted to give a colourable appearance of the deed relating to property in Calcutta when in reality such is not the case could bring the deed within the limited jurisdiction of the Court. For the same reasons, therefore, as have been stated above, the plaintiff's case fails."

45. My attention is also drawn by Sri.T.R.Rajagopalan, learned Senior Counsel appearing for the first respondent to the judgment of the Privy Council in Mathura Prasad v. Chandra Narayan Chowdhury and Ors., reported in AIR 1921 PC 8. In Mathura Prasad's case also the Law laid down by the Privy Council in Harendra Lal Roy Chowdhuri's case was followed.

46. In Mathura Prasad's case, it was found that both the parties had knowledge of the fact that the mortgagor had no title to the property that was included in the mortgage. The properties situate in the District of Mozufferpur, were included in the mortgage deed just to enable the registration of the mortgage at the office of the Registering Authority situate at Mozufferpur, this action, according to the Privy Council would result in the document being in operative as a mortgage, having been registered in fraud of the Registration Laws. To the same effect is the judgment of the Bombay High Court in Husensaheb Gajbarsaheb Vajirnaik v. Hasansaheb Sayad Abdul, reported in AIR 1926 Bom 165. In the said judgment, the Bombay High Court held that if it is shown that the Sub Registrar, who registered the document had no jurisdiction to register the document, it must follow that the Courts have no jurisdiction to entertain the document because it does not been duly registered.

47. The next decision relied upon by Mr.T.R.Rajagopalan,

learned Senior Counsel, is the judgment in Inuganti Venkatarama Rao v. Sobhanadri Appa Rao and others, reported in AIR 1936 PC 91, in the said judgment also the law laid down is to the effect that if the title of the vendor is in doubt and the land that is included is so small that it cannot be put to any use, then such inclusion would definitely be a fraud on registration and hence the document will not convey any title to the purchaser with reference to the other properties situate outside the jurisdiction of the Registering Authority. To the same effect is the judgment of the Calcutta High Court in Sailendra Nath Singha and another v. Keshab Chandra Choudhury, reported in AIR 1937 Cal 347.

48. Mr.T.R.Rajagopalan, learned Senior Counsel would also invite my attention to the judgment of the Division Bench of this Court reported in M.Mohamed Kassim and others v. C.Rajaram and others, reported in 1988 (1) MLJ 447, wherein the Division Bench had pointed out that the Registration Law is positive that the document should be registered only before the Sub Registrar within whose jurisdiction the property is situate with certain exception. In the context, the Division Bench had observed as follows:

"The sale deeds are compulsorily registrable under Section 17 of the Indian Registration Act of 1877. Section 28 of the Act requires that every registrable document shall be presented for registration in the office of a Sub Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. Section 49 enacts that no registrable instrument shall affect any immovable property comprised therein unless it has been registered in accordance with the provisions of the Act. Section 65 provides for the transmission of copies to the offices of other districts in which any of the property is situate. Therefore, the registration law is positive that a document should be registered only before the Sub Registrar within whose jurisdiction the property is situate with certain exceptions."

In the course of the said judgment, the Division Bench had also observed as follows:

"There is no difficulty if actually the vendors had any property in Kerala and it is included in the sale deeds, since in such a case the sale deeds can be registered in Kerala and they will be

perfectly valid.”

49. Relying upon the Law laid down in the aforesaid judgments Mr.T.R.Rajagopalan, learned Senior Counsel, would contend that the Registration of Ex.B9 Sale Deed at Kerala, would amount to fraud on registration and therefore, the same would not convey any title to the second defendant. If the second defendant does not get title to the property under Ex.B9 executed by Rajammal, the first defendant then the legal effect is that Rajammal died possessed of that property and being the heir of husband of Rajammal, the first respondent would be entitled to the property.

50. Contending contra Mr.Sharath Chandran, would submit that all those cases relied upon by the learned Senior Counsel are cases where it was factually found that though the document was registered at the office of the Registering Authority, by showing that portion of the property was situate within the jurisdiction of such Registering Authority, it was found that the property was either non-existent or fictitious or the mortgagor or the vendor did not have title to the property that was included. Mr.Sharath Chandran, would also rely upon the observations of the Division Bench in M.Mohamed Kassim and others v. C.Rajaram and others, extracted above, to contend that the Division Bench had held that if it is bona fide purchase and the vendor had title to certain property, situate within the jurisdiction of the Registering Authority at Olavakkode, Palakad District in Kerala, then the Sale Deed would be perfectly valid as Section 28, as it stood prior to the introduction of Subsection (b) permitted such registration. He would also contend that Tax Planning as opposed to tax evasion is perfectly legal. Since the Stamp Duty and the Registration charges in Tamil Nadu, were very high as compared to those in Kerala, such registrations were resorted to and only to curb such practice, Section 28(b) was introduced to the Registration Act.

51. According to him, the very introduction of Sub Section (b) to Section 28 would show that such registrations were in fact perfectly legal unless it is shown that either the property was non-existent or the vendor had no title to the property. In the case on hand, According to Mr.Sharath Chandran, the vendor has purchased the property under Ex.A17 Sale Deed and it is not the case of the either of the parties that the vendor under Ex.A17, viz. Meenakshi, did not have title to the property conveyed by her under Ex.A17. Apart from relying on the observation of the Division Bench in M.Mohamed Kassim and others v. C.Rajaram and others, Mr.Sharath Chandran, would also submit

that in almost all the decisions relied upon by the learned Senior Counsel appearing for the first respondent, it was factually found that the property shown in the Sale Deed to be situate at Kerala was either non-existent or that the vendor did not have title to the said property.

52. Mr. Sharath Chandran, would also rely upon the judgment of the Privy Council in Hari Ram and Raja Ram v. Sheodial Ram and Hardial Ram, reported in 1888 SCC ONLINE PC 35, wherein, the Privy Council after survey of the provisions of the Registration Act, had concluded as follows:

"It appears to their Lordships that this judgment puts a construction upon Section 28 which cannot be supported, and in fact imputes to the Legislature an intention which does not appear from the provisions of the Registration Act to have been their intention. The words, if we take them in their ordinary sense, "within whose district the whole or some portion of the property to which such document relates is situate", certainly do not shew an intention that there should be any inquiry as to whether the place where the document was registered was the place where what may be called some substantial portion of the property is situate; and an inquiry of that kind might very frequently lead to considerable difficulty. But the intention of the Act is apparent from the subsequent provisions. In section 64 it is provided that "every sub-registrar on registering a document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof, and of the indorsement and certificate thereon, and send the same to every other sub-registrar subordinate to the same registrar as himself in whose sub-district any part of such property is situate", and then, such sub-registrar shall file the memorandum in his book No.1," Section 65 and Section 66 contain similar provisions where the property is situate in more districts than one. Thus the information is conveyed to the registrars or sub-registrars of every place where the document ought to be registered, and thus all the information which it is the object of a register to afford is to be found in those different places. It appears to have been the intention of the Legislature in making these provisions that it should be sufficient that the registration be made by the

parties, as is stated in Section 28, in the place where some portion of the property not a substantial portion, but where any portion of the property is situate, leaving it to the office to do the rest. These provisions are calculated to effect that, and are in accordance with what might reasonably be supposed to be the intention of the Legislature."

53. Mr.Sharath Chandran, would also draw my attention to the judgment of the Division Bench of this Court in Ve.Rm. V.Ramanathan Chettiar v. Muthukumara Pillai and others, reported in Vol 12 LW 754, wherein, the Division Bench had adverted to the provision of Section 28 of the Registration Act and held that even if it is a small portion of the property that situate within the jurisdiction of the Registering Authority, before whom the document is actually registered, it cannot be said to be fraud on registration, if it is shown that the property was available and the mortgagor or the vendor, as the case may be, has title to the property. In doing so, the Division Bench had observed as follows:

"If the parties intended a particular property, however small in value as compared with the rest, to be part of the security although the motive for its inclusion might be to have the document registered, by a particular Sub-Registrar, that motive cannot, in any way be said to be in fraud of, or in the violation of the Registration Act."

54. In F.M.Chokkalingam Chettiar v. At. An.Athappa Chettiar, reported in Vol 28 LW 300, a Division Bench of this Court had held as follows:

"The next question for consideration is as regards the validity of the registration. The case for the respondent is that there was no intention to purchase the property that no consideration was paid for it and that the whole transaction was a device to get Ex. A executed and registered as Erode. There is no doubt that the parties wanted to get the document registered at Erode. But the question is whether in effecting that intention they really did anything which would invalidate the document. It will be a broad proposition unsupported by any authority to say that where a person bona fide buys property for the purpose of facilitating registration of a

transaction and also bona fide includes it in a sale or mortgage, he commits a fraud on registration which would render the whole transaction invalid. In such a case nobody is cheated. There is the intention to buy the property. The title of the property is in the person who conveys it, or mortgage it. Under the Registration Act a copy of the registered document is sent to the other district where the other property is situated and the mere fact that a man wants to facilitate a transaction should not in our opinion render the transaction invalid if there is no other objection to the transaction. In cases where a nonexisting property is mentioned or in cases where property which is existing but which does not belong to the mortgagor or vendor is mentioned or in cases where the parties enter into a nominal transaction without any intention of title passing and yet the sale is registered, in such cases it may be said that there is a fraud with the object of defeating the provisions of the Registration Act. Here both the parties were aware of what was going on and nobody is cheated by it."

55. The above observations of the Division Bench would apply to the case on hand in all fours. My attention is also drawn to the judgment in *S. Joseph Nadar and another v. T. Dasammal Nadathi and 2 others*, reported in 1989 TNLJ 242, wherein, it was held that if there is no collusion between the parties then registration in Kerala by itself would not invalidate the document.

Section 28 of the Central Act (Registration Act) reads as follows:

28. Place for registering documents relating to land.— Save as in this Part otherwise provided.— every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) (d) and (e), section 17, sub-section (2), [insofar as such document affects immovable property,] and section 18, clauses (a), (b) 1 [(c) and (cc),] shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

56. A reading of Section 28 would clearly show that it is an

enabling provision which provides for registration of documents with the Registering Authorities in whose jurisdiction, the whole or some portion of the property to which such document relates is situate. The language of Section does not suggest that it should be either a major portion or otherwise. The requirement of Law is therefore, there should be some property in existence belonging to the vendor or the mortgagor, as the case may be, within the jurisdiction of the Registering Authority in whose office the document is registered. Of course, this enabling provision was misused by including properties of very small extent in the Sale Deeds and having the Sale Deed registered at Kerala merely because the Stamp Duty at Kerala was far less than the Stamp Duty in Tamil Nadu. It can be termed as tax planning, if it is a bona fide transaction and the property is situate at Kerala is actually existence and was owned by the vendor of the mortgagor. If the property is fictitious or it did not belong to the vendor or the mortgagor naturally it would be a fraud on registration. It is only with a view to curb this practice, Section 28 (b) was introduced by the Tamil Nadu Registration Amendment Act 19 of 97, with effect from 29.03.1997 as the result of the amendment, the amended Section 28 reads as follows:

Section 28. "Place for registering documents relating to land.- Save as in this Part otherwise provided.-

(a) every document mentioned in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of sub-section (1) and sub-section (2) of section 17 in so far as such document relates to immovable property and in clauses (a), (b), (c) and (cc) of section 18, shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu; and

(b) any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be deemed to be null and void."

Therefore, it is clear that prior to the introduction of Section 28(b) of the Registration Act by the Tamil Nadu Registration Amendment Act 19 of 1997, a Registration of a document at Kerala, with reference to properties situate within Tamil Nadu was not per se in valid. Unless it is shown that certain circumstances exist to make transaction as one made with fraudulent intention, it cannot be said that such a document be it sale or mortgage is invalid. Therefore, the validity or

otherwise of the document would essentially depend on the nature of the transaction and the bona fide nature of the transaction. The same legal position was reiterated by Hon'ble Mr. Justice R.S. Ramanathan in *Gopi v. David*, reported in 2011 (1) CTC 694.

57. The position that emerges upon a survey of the law laid down in the precedents, referred to above, and the amendment of the statute namely the Registration Act is as follows:

1. The Registration of the document be it conveyance or a mortgage in the office of the Registering Authority within whose jurisdiction a portion of the property is situate is permissible under Law prior to amendment of Section 28 of the Registration Act, by Act 19 of 1997 introduced by the State of Tamil Nadu.
2. The extent of property so included however small it is would give the jurisdiction to the Registering Authority to register the document. The other provisions of the Registration Act, viz. Sections 64 and 65 take care of the other requirements, of sending a information to the offices of the Sub Registrar, within whose jurisdiction the remaining property covered by the document is situate.
3. Unless, it is shown that the property itself was not in existence or the vendor or the mortgagor, as the case may be, did not have title to the properties so included in the Sale Deed, it cannot be said that such registration would amount to a fraudulent registration, thereby, making the entire document invalid.
4. The intention of the parties should also be considered while deciding the question of invalidity for fraud on registration. It was open to the parties to enter upon a bona fide transaction with a view to reduce the burden of stamp duty and such a transaction cannot be termed as fraudulent.
5. The very fact that Section 28 was amended in order to invalidate sale Deeds registered outside the State, would show that such transactions which happened prior to the amendment would be valid.
6. The validity of the documents registered outside the State would depend on the facts and circumstances of each case and it cannot be applied as a universal rule that all documents registered outside the State would be invalid or that all documents registered outside the State would amount to fraud on registration.

58. If we are to analyse the facts on hand based on the principles of law, the sale Deed viz. Ex.B9 was registered on 05.07.1995 on that date, as the law stood, such registration was legally permissible. The vendor, under Ex.B9, viz. the first defendant had purchased a certain property at Kerala within the jurisdictional limits of the Registering Authority at Olavakkode, under Ex.A17 on the same day. Though D.W.1 has been cross-examined on the registration aspect, it has not been suggested to him that such property is not at all in existence or that the vendor under Ex.A17, P.R.Meenakshi did not have title to the property to convey to the first defendant. Therefore, the twin requirements, viz. the property being fictitious and the vendor or the mortgagor not having title to the property, have not been established in the case on hand. The acts of Registration being official acts performed by the Registrar in discharge of his duties, they are entitled to be presumed true in view of Section 60(2) of the Registration Act. I am therefore of the considered opinion that the Registration of the document, viz. Ex.B9 at Kerala would not amount to fraud on registration as it at best can be called tax planning to avoid payment of a huge amount as stamp duty.

59. As already pointed out tax planning as opposed to tax evasion is perfectly legal and justified. In view of the above, the second additional question of law framed on 06.11.2019 is also answered in favour of the appellant. The limited estate vested in the first defendant Rajammal under Ex.A4 dated 09.09.1949 would enlarge into an absolute estate and the sale by Rajammal in favour of the appellant/second defendant under Ex.B9 would convey title to the appellant/second defendant.

60. In view of the answers to the question of law as above, the Second Appeal is allowed, the judgments and decrees of the Courts below are set aside and the suit in OS No.1308 of 1998 will stand dismissed. However in the circumstances of the case, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv

To

1. The Principal District Judge,
Coimbatore.
2. The II Additional Subordinate Judge,
Coimbatore.
3. The Section Officer,
V.R.Section,
High Court of Madras.

+2 Ccs to Mr.Govind Chandrasekar, Advocate sr 2821, 2645
+1 CC to Mr.T.R.Rajagopalan, Advocate sr 1623.

S.A.No.297 of 2014
and MP No.1 of 2014

SVI(CO)
SP(21/08/2020)



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