



A.S.No.349 of 2011
and
M.P.No.1 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2023

Pronounced on : 27.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

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and
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1.Murugesan
2.Ganesan (Died)
3.Rajavel
4.H.Kumar @ Rajendran (Died)
5.Maheswari
6.Ambiga
7.Thamaraikani @ Ezhumalai ... Appellants /
Defendants No.3 to 9

8.R.Jayaveni
9.N.Sasikala
10. N.Premalatha
11.N.Lokesh ... Appellants

[A2 died, A8 to A11 are brought on
record as LR's of deceased 2nd
Appellant viz., Ganesan vide
Order of Court dated 20.03.2023
made in C.M.P.Nos.6504,6505
and 6506 of 2023 in A.S.No.349 of 2011]

Versus

1.Rajendran
2.Sampath ... Respondents/Plaintiffs
3.Durairajan ... Respondent/2nd defendant
4.Amsaveni

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5.Kanagammal

6.Venkatesan

7.Minor Sonia

8.Minor.Vinothkumar

9.Minor.Prabakaran

Respondents 7 to 9 are

(represented by Mother and natural
guardian Amsaveni Ammal)

... Respondents /

Defendants 10 to 15

10.Dharani

11.Aswini

12.Preetha

13.Pawan Kumar

... Respondents

[A4 died, R10 to R13 are brought on
record as LR's of deceased 4th appellant
viz., H.Kumar @ Rajendran, vide

Order of Court dated 26.04.2023 made in
C.M.P.Nos.6503, 6507 and 6509 of 2023 in
A.S.No.349 of 2011].

PRAYER: Appeal is filed under Section 96 of C.P.C., r/w. Order 41 Rules 1
and 2 of Civil Procedure Code against the Judgment and Decree made in
O.S.No.2 of 2008 dated 04.02.2011 by the Additional District and Sessions
Court / Fast Track Court, Vellore.

For Appellants : Mr.A.Palaniappan

For Respondents 1 and 2 : Mr.A.V.Aron

For Respondents 3 to 9 : Served – No Appearance

For Respondents 10 to 13 : Refused

JUDGMENT

(Judgment was delivered by **R.KALAIMATHI, J.,**)



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The defendants No.3 to 9 in O.S.No.2 of 2008 have preferred this appeal against the judgment and decree passed in O.S.No.2 of 2008 on the file of the Additional District Court, Vellore on 04.02.2011.

2. The grand children of Tmt.Amaravathi Sadakaran, namely Rajendran and Sampath (sons of Chinnakuzhandai Gounder) had filed the suit in O.S.No.2 of 2008 for partition of 1/3rd share in the suit properties and for possession.

3. The defendants are the legal heirs of Veerabathiran and Perumal who are the brothers of Sadakaran @ Ponnusamy Gounder.

4. According to the plaintiffs, the suit properties originally belonged to one Thanjan Gounder and his wife Ponnammal. Out of 5 items shown in the plaint, the 1st item was purchased by the said Thanjan Gounder by way of registered sale deed dated 22.12.1909. The 2nd item was purchased by the said Thanjan Gounder by way of registered sale deed dated 12.10.1911. The 3rd item of suit property was purchased by the said Tmt.Ponnammal Thanjan by way of registered sale deed dated 22.03.1906. Thanjan sold the 1st and 2nd item of suit properties to one Perumal Gounder on 25.05.1915. The said Perumal Gounder executed a registered sale deed in favour of



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Veerabathira Gounder, father of the 1st defendant and Sadakaran @ Ponnusamy Gounder by way of registered sale deed on 02.12.1916. The said Perumal Gounder sold the 1st and 2nd items of suit properties which he purchased from Thanjan Gounder along with his property to an extent of 4.32 acres. After the demise of the said Thanjan Gounder, his wife Ponnammal and his children namely one Perumal, Veerabathira Gounder and Sadakaran @ Ponnusamy Gounder were in possession and enjoyment of the suit property jointly by constituting undivided Hindu Joint Family. After the demise of Sadakaran @ Ponnusamy Gounder, grand father of the plaintiffs, his wife Amaravathi Ammal, to eke out her livelihood, she migrated her family consisting of her children namely Perumal, Chinnakuzhandai Gounder, Thanjammal and Ponnammal to her mother's house at Annasipalayam. The above said Perumal died when he was 7 years old. Thanjammal and Ponnammal died issueless. Therefore, the plaintiffs who are the children of Chinnakuzhandai Gounder and grand children of Sadakaran @ Ponnusamy Gounder are entitled to 1/3rd share in the suit property.

5. Contending contra, the 2nd defendant claims that the plaintiffs are not entitled to any share in the suit properties, since the grand mother of the



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plaintiffs namely Amaravathi Ammal, after demise of her husband Sadakaran

@ Ponnusamy Gounder, sold her husband's property to Perumal who is the grand father of the 2nd defendant, that he got in the family partition long ago in the year 1937 itself and left the village along with her minor son Chinnakuzhndai Gounder @ Arunachalam in the year 1937 itself. From the date of his purchase, the said Perumal and after his demise, his son Japan @ Ponnusamy, the father of the 2nd defendant had been in possession and enjoyment of his properties till his death and after his demise, the 2nd defendant alone is in possession and enjoyment of his properties.

6. Whereas the suit was resisted by the defendants 3, 6 in a similar line as contended by the 2nd defendant.

7. At trial, the 2nd plaintiff Tr.Sampath was examined as PW1 and one Tr.Ramamoorthy was examined as PW2 and Exs.A1 to A12 were marked. Whereas on the side of the defendants, the 3rd defendant Tr.Murugesan and 5th defendant Tr.Rajavel were examined as DW1 and DW2. Exs.B1 to B37 were marked. The registration copy of the sale deed dated 08.12.1937 executed by Amaravathi Ammal, wife of Sadakaran @ Ponnusamy Gounder



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in favour of Perumal Gounder in respect of the suit properties is Ex.B1.

Patta Pass Book in the name of Perumal is Ex.B2.

8. Based on the above said pleadings, the following issues were framed by the trial Court on 24.11.2004:

1. Whether son and daughters of Munirathinam are necessary parties for the proceedings?
2. Whether the suit is bad for non joinder of necessary parties?
3. Whether the 2nd defendant had prescribed title by adverse possession by ouster?
4. Whether the suit is barred by limitation?
5. Whether a partition has been taken place between Perumal, Veerabathiran and Sadakaran @ Ponnusamy?
6. Whether the 3rd defendant and his predecessor in title have prescribed title by adverse possession by ouster?
7. Whether the plaintiffs grand mother sold the properties allotted to her husband in the partition that took place in the year 1937?
8. Whether court fee paid U/s. 37(2) of C.F.Act is correct?
9. Whether the 5th and 6th defendant have prescribed title by adverse possession?



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10. Whether the plaintiffs are entitled to 1/3rd share in the suit properties?

11. To what relief the plaintiffs are entitled to?

9. The following additional issues were framed on 20.08.2008:

1. Whether the plaintiffs are entitled for share in the suit schedule properties?

2. Whether the defendant is perfected his title in the property by adverse possession?

3. Whether the suit is barred by limitation?

4. To what other relief?

10. The following additional issues were framed on 13.08.2010:

1. Whether the description of the plaint schedule mentioned properties is incorrect?

2. Whether it is true that the plaintiffs are not entitled to any share in the suit properties since the grand father of plaintiffs died long before the Hindu Succession Act, 1956 and Hindu Women Right Property Act 1937 came into force?

3. To what other relief if any?



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11. The trial Court has concluded that Hindu widow has no right to alienate the property before the advent of Hindu Succession Act, 1956. As the sale under Ex.B1 which was effected by Amaravathi Ammal was held to be invalid. It was also further held that she had only limited interest in the property as widow of Sadakaran @ Ponnusamy Gounder. It was further held that the plaintiffs are entitled to 1/3rd share in the suit properties. Aggrieved, this appeal is preferred by the defendants 3 to 9.

12. The learned counsel for the appellants Mr.A.Palaniappan would vehemently argue that the suit property was already partitioned between the children of Thanjan Gounder and his wife Ponnammal namely Perumal, Veerabathira Gounder and Sadakaran @ Ponnusamy Gounder. But the the plaintiffs who are the grand children of Sadakaran @ Ponnusamy Gounder have claimed that no partition had taken place, such a claim is totally baseless. He would further contend that the plaintiffs are not entitled to any share in the suit schedule property since their grand mother Amaravathi Ammal after the demise of her husband Sakdakaran @ Ponnusamy Gounder, which was hitherto partitioned among Thanjan Gounder and his other heirs, sold the properties through registered sale deed dated

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08.12.1937, Ex.B1. It is his further argument that the said document is 30 year old document and the sale was effected for the purpose of meeting the family debts and for necessity. The sale was effected by the said Amaravathi Ammal on behalf of her minor children also. The plaintiffs having come to know about the existence of the sale deed Ex.B1, never challenged the same within the limitation period. Subsequent to the purchase of the said properties, the properties had devolved on the legal heirs of the purchaser Perumal and patta in respect of the said properties were also mutated and stands in the name of respective purchaser's legal heirs. But the contra findings by the trial Court is unsustainable and prayed to allow the appeal. To substantiate the same the learned counsel for the appellants relied on the following judgments :

1. ***The Collector of Masulipatam v. Cauvaly Vencata Narrainapah*** reported in **1861 SCC OnLine PC 14.**
2. ***Banga Chandra Dhur Biswas and anr., v. Jagat Kishore Acharjya Chowdhuiri and others*** reported in **1916 SCC OnLine PC 50.**
3. ***Gangadharan v. Janardhana Mallan and others*** reported in **(1996) 9 SCC 53.**



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13. Per contra, the learned counsel appearing for the respondents / plaintiffs would strenuously contend that the wife of Sadakaran @ Ponnusamy Gounder did not have absolute right to sell the entire property and the plaintiffs being the children of Chinnakuzhandai Gounder and grand children of Sadakaran @ Ponnusamy Gounder are entitled to 1/3rd share. Chinnakuzhandai Gounder was also in joint and constructive possession of the properties along with the plaintiffs and the defendants as coparceners. He would further contend that the properties are ancestral in nature, the parties are entitled to their respective shares as per their branches. He would also further claim that since the defendants refused for partition of the suit properties of their 1/3rd share, the suit was filed. As the vendor namely Amaravathi Ammal, wife of Sadakaran @ Ponnusamy Gounder did not have absolute right to sell the properties, the trial Court has rightly granted 1/3rd share in favour of the plaintiffs. The learned counsel for the respondents relied on the following judgment :

1) **Marla Subrahmanyam v. Chelikani China Soorayya** reported
in **Vol.63 LW 356**.



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14. Heard the arguments of learned counsels appearing for the appellants as well as the respondents and perused the materials on record in extenso.

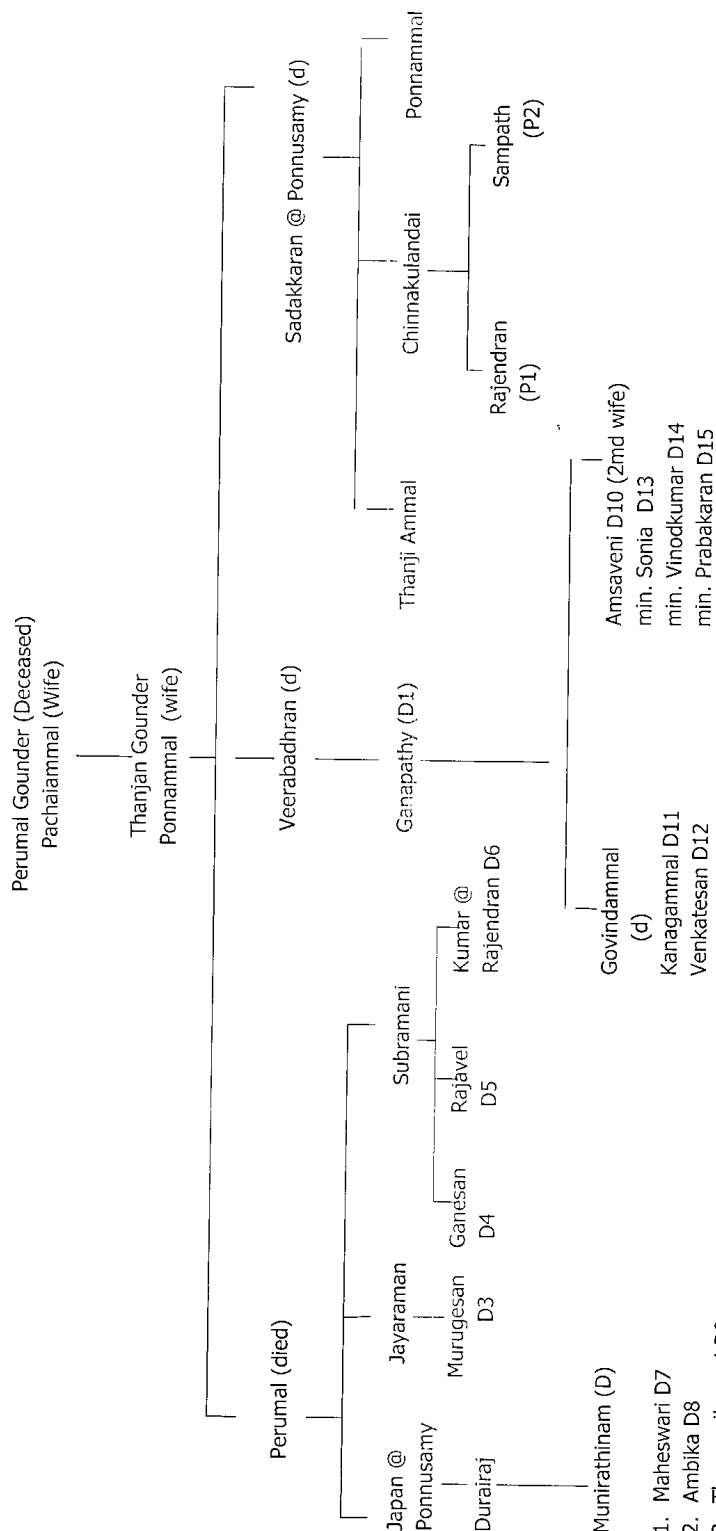
15. In the light of the aforesaid submissions, the following points arise

for consideration:

1) Whether
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17. The suit was laid by the plaintiffs S/o.Chinakuzhandai Gounder, for partition of 1/3rd share in the suit schedule property against the legal heirs of Veerabathira Gounder and Perumal [brothers of Sadakaran @ Ponnusamy Gounder]

Five Schedule of properties are given in the plaint and total extent is 7 acres.

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1. In Vellore District, Vellore Registry, in Anpoondi Village, in Punja S.No.227/3, to an extent of 1.67 Acres.
2. In Vellore District, Vellore Registry, in Anpoondi Village, in Punja S.No.227/2, to an extent of 2.00 Acres.
3. In Vellore District, Vellore Registry, in Anpoondi Village, in Punja S.No.227, to an extent of 0.65 Acres.
4. In Vellore District, Vellore Registry, in Anpoondi Village, in Punja S.No.226, to an extent of 0.65 Acres.
5. A well situate in S.No.227 and 1/3 share in the same to the plaintiffs.

18. Admitted facts are as follows:

- The 1st item of suit property was purchased by Thanjan Gounder from one Jaga Kariyan and another by way of registered sale deed dated 22.12.1909.
- The 2nd item suit property was purchased by the said Thanjan from one Arunagiri and Lakshmiammal by way of registered sale deed dated 12.10.1911.



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- The 3rd item of suit property was purchased by Tmt.Ponnammal wife of Thanjan Gounder from Meeratchi Ammal by way of registered sale deed dated 22.03.1906.

19. The plaintiffs claimed that after the demise of their grand father Sadakaran @ Ponnusamy Gounder, his wife Amaravathi Ammal in order to eke out her livelihood, migrated along with her children Perumal, Chinnakuzhandai (father of the plaintiffs), Thanji Ammal and Ponnammal to her mother's house at Annasipalayam. As the above said two daughters of Chinnakuzhandai Gounder died issueless, the plaintiffs who are the sons of Chinnakuzhandai Gounder are entitled to 1/3rd share in the suit schedule properties. It was further claimed that the plaintiffs and the defendants are constituting Hindu Undivided joint family and they have been enjoying the property jointly as coparceners. On legal notice to the defendants calling for partition as it was not heeded to, the suit.

20. Sadakaran @ Ponnusamy Gounder had four children through Amaravathi Ammal namely Perumal, Thanjiammal, Chinnakuzhandai Gounder and Ponnammal. Plaintiffs are the children of Chinnakuzhandai Gounder. The plaint reads that sisters of Chinnakuzhandai Gounder namely

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Thanjiammal and Ponnammal died issueless, but, PW1 Sampath son of Chinnakuzhandai Gounder has admitted that Ponnammal had one daughter.

21. Therefore, suit for partition was laid by the children of Chinnakuzhandai Gounder without adding legal heirs of Ponnammal is certainly bad for non-joinder of necessary parties.

Point Nos.2 and 3:

22. The plaintiffs' claim of 1/3rd share is stoutly denied by the defendants on the ground that the properties left by Sadakaran @ Ponnusamy Gounder were sold out by his wife Amaravathi Ammal on 08.12.1937 through Ex.B1 sale deed. It was contended by the defendants that as the sale was effected for legal necessity, it is perfectly valid and therefore, the plaintiffs who are the sons of Chinnakuzhandai Gounder are not entitled for the partition of suit properties as claimed for.

23. An interesting question has arisen as to whether the alienation made by the widow [on 08.12.1937] for legal necessity is a valid transaction or not. The vital document in this appeal is Ex.B1 - certified copy of sale deed executed by Amaravathi Ammal Sadakaran in favour of Perumal



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Gounder, dated 08.12.1937. On a thorough perusal of Ex.B1, the said sale deed was executed by Smt.Amaravathi Ammal on her behalf and on behalf of her minor child Chinnakuzhandai Gounder @ Arunachalam, aged about 15 years. The relevant portions of Ex.B1 is culled out and extracted hereunder:

"அமராவதி அம்மாள் புருஷனுக்கு பிதுராஜியதமாய் பாத்தியப்பட்டு என் பாகத்திற்கு வந்து என் சுவாதீனத்தில் அனுபவத்தில் இருந்து வரும் அடியில் கண்ட சொத்துக்களை பாலம்பாக்கம் பெருமாள் கவுண்டர் கடன் தீர்க்கும் பொருட்டும் என் குடும்ப கடனை தீர்க்கும் பொருட்டும் ரூபாய் 142க்கு கிரையம் எடுத்து கொடுத்து ... இதற்காதரவாக, (one word illegible) அடமான கடன் பத்திரம் ஒன்று உன்வசம் கொடுத்திருக்கிறேன்..."

24. The following properties were sold by her under Ex.B1:

1/3rd share in dry S.No.226 - 0.67 cents, 1/3rd share in the well situate in the said survey number and in dry S.No.227 at Anpoondi village, Acre 1.45 cents sold to her husband's brother Perumal. The Hindu Women's Right to Property Act, 18 of 1937 came into force on 14.04.1937. The validity of the Act was questioned in Kottaiya v. Annapoorani reported in 1945 Mad 57 and it was held by the Federal Court that the Act did not operate to regulate succession to agricultural lands in the Governors Provinces or to a mortgagees interest or a lessees interest in such land. It is



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interesting to note that after the decision of the Federal Court relating to agricultural lands, some of the Provinces extended the operation of the Central Act to agricultural lands by passing suitable legislations, namely Bombay Act 17 of 1942. Central Province and Banaras Act 6 of 1942, Orissa Act 5 of 1944, Assam Act, 13 of 1943, Uttar Pradesh Act, 11 of 1942. The said Acts came into force from 14.03.1937. Since some difficulties were faced while interpreting the Act, it was amended on 08.04.1938 by Act, 11 of 1938. The amendment Act was made retrospectively and operated from the day of main enactment. It is relevant to note that the main enactment is in terms stated in Section 4, is not retrospective in operation and does not apply to the property of any Hindu, who dies intestate before the commencement of the Act, Nor does it apply to the widow of any coparcener who died before the Act came into force. Therefore, which law governs Ex.B1 transaction is the crucial question. In **Marla Subrahmanyam v. Chelikani China Soorayya** reported in **Vol.63 LW 356**, a Full Bench of this Court held that in a case of alienation by a limited owner like a widow or a daughter inheriting, husband or father's estate by which she converts the immovable property into cash cannot be held to be binding on the reversioners solely by reasons of the lapse of long time since alienation in the absence of proof of necessity for the alienation or bonafide enquiry by



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the alienee. It has been further held that a Hindu female - limited owner has right to convert her limited interest in the property irrespective of any legal interest or benefit to the estate. There is no presumption that she had conveyed the absolute estate and not merely her own interest. The quantum of interest conveyed would depend on the terms of the sale deed, the purpose for which the sale was effected and the evidence of legal interest or benefit or atleast whether a reasonable and bonafide enquiry was made as to the necessity of sale. The intention to deal with the entire estate may be inferred from recitals of necessity or benefit which would have no meaning if the limited owner was only dealing with life interest to which would be necessary and relevant if an absolute title were conveyed.

25. In ***Thimmanna Bhatta v. Rama Bhatta*** reported in ***AIR (1938) Mad.300***, this Court upheld an alienation by a limited owner against the reversioners on the strength of the recitals in the sale deed, the consent of the presumptive reversioner and the evidence adduced regarding necessity for sale.

26. In ***Kunjam Venkataramanayya v. Dejappa Konde*** reported in ***6 LW 530***, which related to the validity of a sale executed by the widow and



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mother of the last male owner, it has been observed that "the onus is undoubtedly on the purchaser to establish necessity. Lapse of time may enable the Court to consider the evidence let in by him favourably and to pay more attention to the recitals in the conveyance than would otherwise have been done". Therefore, the points for consideration are an alienation of her own life interest without any legal necessity, the alienation by the widow/limited owner / lawful alienation made with legal necessity. The wordings in the deed has to be looked into in order to ascertain the necessity.

27. It is relevant to refer to the observations made by the Privy council in **Venkaji v.Vishnu** reported in (1894) 18 534, 536 it has been observed that "A widow like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers, provided, ... she acts fairly to her expectant heirs".

28. In the light of the above said discussions, the recitals of Ex.B1 sale deed has to be thoroughly gone into. First of all, the plaintiffs paternal grand mother Amaravathi Ammal in fact sold the 1/3rd share which devolved on her, upon the death of her husband, to Perumal who is none other than



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her husband's elder brother. The document reads that the property sold through Ex.B1 came to the hands of Sadakaran @ Ponnusamy Gounder by way of partition and after his death, the properties devolved on her and she was in possession and enjoyment of the said properties. The document further reads that for the purpose of repaying the debts of Palambakkam Perumal Gounder and to repay her family debts, the sale was effected. It has been scribed to support the said details, the mortgage deed was also tendered to Perumal Gounder (vendee) by Smt.Amaravathi Ammal. These details serve two purposes, one vendee has the knowledge about the necessity. It fulfills the condition that the vendee had sufficiently enquired the purpose for which sale is effected. The sale deed is dated 08.12.1937. The law confers only limited interest upon the Hindu widow. But, she is at liberty to sell or dispose of her limited interest. She is empowered under the Hindu law to convey a larger interest than she has and pass absolute title to the alienee provided the transaction is justified by legal necessity or benefit. The person who dealt with the limited owner shall prove the facts and circumstances justifying the alienation of larger interest conveyed by her. Following principles laid down in **Hunoomanpersaud Pandey v. Babooee Moonraj Koonweree** reported in **6 (MIA) 393 (1856)**, it is made vividly clear that through Ex.B1 sale deed Amaravathi Ammal, after the death of her



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husband inherited her husband's estate and took a limited interest therein.

Though her interest is said to be limited under the Hindu Law, she had a qualified power to convey a larger interest than she had, provided the transaction is for legal necessity and the vendee had made bonafide enquiry regarding the existence of necessity and satisfied themselves about the same before the execution of sale, as laid down in **Hunoomanpersaud** case. The suit was laid in the year 2008, (O.S.No.2 of 2008). Exactly before 71 years, the transaction of sale had taken place. Law is settled that long possession of enjoyment by bad alienation from a limited owner no doubt gives rise to the presumption of lawful origin of the alienees title. But the title would be equally lawful whether it was a limited interest or an absolute estate that he got under the sale. In the case of alienation by the widow, it is valid grant.

29. As mentioned supra, the reasons for the alienation is found in Ex.B1 Sale Deed and the mortgage deed itself was tendered to the alienee would go to show that the alienation made by the widow, though she had a limited ownership, was legally effective to convey an absolute interest. Therefore, Ex.B1 alienation which was made by the widow of Sadakaran @ Ponnusamy Gounder would bind the reversioners. As regards question of

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limitation, we have no hesitation to hold that as the alienation which took place in the year 1937 was only sought to be challenged in the year 2008 is clearly barred by limitation. Therefore, necessarily Ex.B1 is proved to be executed for legal necessity and necessarily, the plaintiffs have to be non-suited as they are not entitled for any share in the suit properties.

30. In the result, this Appeal stands allowed and the Judgment and Decree made in O.S.No.2 of 2008 dated 04.02.2011 by the Additional District and Sessions Judge, Vellore District (Fast Track Court), Vellore, stand set aside. Considering the relationship between parties, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.,] [R.K.M., J.,]
27.09.2023

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Speaking Order / Non-Speaking Order
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To
The Additional District and Sessions Judge,
Vellore District (Fast Track Court),
Vellore.

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Pre-delivery judgment in
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