



S.A. No. 926 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 21.07.2023

CORAM:

**THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

S.A. No. 926 of 2016

and

C.M.P.No. 18785 of 2016

Kasthuriammal (died)

2. R.Kannan

3. R.Srinivasan

(2<sup>nd</sup> and 3<sup>rd</sup> appellants brought on record  
as LR's of deceased sole appellant viz.,  
Kasthurammal vide court order dated  
06.12.2021 in C.M.P.Nos.2658, 2659  
& 2661 of 2021 in S.A.No.926/2016)

... Appellants

Vs.

A.Murugesan

... Respondent

**PRAYER:** Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 03.03.2016 made in A.S.No. 9 of 2014 on the file of III Addl. District Court, Vellore at Tirupattur partly allowing the judgment and decree dated 11.03.2013 made in O.S.No.17 of 2010 on the file of Sub-Court, Vaniyambadi.



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For Appellants : Mrs.S.Thamizharasi

For Respondent : Mr.D.Senthil Kumar

### **JUDGMENT**

The appellant herein is the defendant in the suit in O.S.No.17 of 2010 on the file of Sub-Court, Vaniyambadi, which was filed by the plaintiff for the relief of declaration and delivery of possession with regard to suit schedule property as listed in the plaint schedule pertaining to the tiled house with door No.39. The defendant denied the plaintiff's claim and claimed right over the properties based on the sale deed executed by her mother Povunammal. On hearing both sides, the trial judge dismissed the suit. Against which, an appeal was filed in A.S.No.31 of 2013 on the file of District Judge, Vellore and the first appellate judge partly allowed the suit by granting half share in the suit property. Aggrieved over that, the defendant preferred this Second Appeal.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

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3. Brief facts of the case is as follows :-

The suit property along with other property originally belongs to one Annamalai Pillai by ancestral as well as by self-acquisition. He had two wives viz., Sundarammal and Povunammal. Through the first wife Sundarammal, he got one son/plaintiff and one daughter Gnanasoundari. Through second wife, he got three daughters. During his life time, the said Annamalai Pillai executed a Will on 27.01.1954 in favour of his two wives. Thereafter, he died on 31.01.1954. As per the Will, 'B' schedule property was allotted to Povunammal with life interest and after her death, it should go absolutely to the plaintiff and the suit property forming part of 'B' schedule property of the said Will. Povunammal enjoyed till her life time until she died in the year of 2009. After her death, the defendant claimed right over the property as if her mother Povunammal executed a sale deed in her favour in the year 1998 itself. So, she refused to vacate the premises and claimed absolute right over the property. Immediately, the plaintiff issued notice to the defendant calling upon her to vacate the suit property and deliver vacant possession. But, she refused to vacate. Hence, the suit has been filed.



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4. The contention of defendant is that she admits the relationship with plaintiff and the defendant, but she denied the plaintiff's claim over the property. At the time of execution of Will in the year of 1954, her mother Povunammal was pregnant and within 6 months, she delivered a male child and within two weeks, child died. So, as a legal heir of pre-deceased son Povunammal having half share in the 'B' schedule as well as 'A' schedule property. She would also submit that the limited right given to Povunammal through the Will in the year of 1954 was enlarged as per Sec.14(1) of Hindu Succession Act, thereby she became absolute owner of 'B' schedule property. So, she sold the property to the defendant in the year of 1998 for a valid consideration. From that, she became absolute owner of the property, thereby she denied the plaintiff's claim. Furthermore, there was a partition entered in the family between her mother, first wife and plaintiff in the year of 1999, in which the suit property was excluded, since because it is absolute property of her mother. Further, she also denied that 'B' schedule in the Will was divided between 1<sup>st</sup> wife and 2<sup>nd</sup> wife on 16.07.1999 and the alleged partition deed also suffered with corrections and errors, which is not



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a valid partition, thereby it would not affect the property given through the Will , thereby, she denied the plaintiff's claim.

5. The Trial Court framed issues and on considering oral and documentary evidence adduced by both sides, the trial judge concludes that the limited interest to enjoy the house property is given under the concept of maintenance. So, if there is any provision for residence either by giving lumpsum money or by giving property, it also amount to pre-existing right to maintenance and the limited interest given in the said Will is enlarged as per provision of Sec.14(1) of Hindu Succession Act. Accordingly, the suit property became her absolute property. Further, the trial court also held that Povunammal gave birth to a male child and the said child was died immediately after two weeks. So, as a legal heir of pre-deceased son, she has share in the property. Accordingly, the claim of plaintiff was denied and the suit was dismissed.

6. Challenging the said findings, the plaintiff preferred an appeal before the District Court, Vellore in A.S.No.31 of 2013 contending that the



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trial judge committed an error in holding that the limited interest given through the Will to Povunammal was enlarged as absolute right as it was given to her in lieu of maintenance, which was deemed as pre-existing right, and it became as absolute right after Sec.14(1) of Hindu Succession Act, as such is totally erroneous for the reason that the intention of testator has to be looked into by considering entire contents of the Will. But without appreciating the said legal aspect, the trial judge dismissed the suit without considering the limited interest given to Povunammal as such is liable to be set aside. Accordingly, the first appeal has been preferred.

7. The first appellate judge independently analysed all the facts and circumstances of the case and finally held that the right given to Povunammal through the Will is only a limited interest and as per the recitals of the Will, 50% of the suit property was devolved upon the male child born to her. Accordingly, he gave birth to a male child, but he was died within two weeks. So, she became legal heir of pre-deceased son, thereby she entitled 50% share in the property. While being so, the partition deed executed between the plaintiff and his mother, as such would not affect



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the right of party, because Povunammal was not given any share in the suit property. Accordingly, the appeal was partly allowed by granting half share in the suit property in favour of plaintiff. Aggrieved over that, the defendant preferred this Second Appeal.

8. The learned counsel for appellant argues that the first appellate judge failed to take note of the fact that deceased Testator bequeathed the suit property in favour of second wife in lieu of her maintenance and the same is governed by Sec.14(1) of Hindu Succession Act, thereby her limited interest gets blossomed and enlarged into an absolute right, but without appreciating that legal aspect, the first appellate judge held that the property is not an absolute property of Povunammal as such is totally erroneous and perverse finding and the same is liable to be set aside. The learned counsel also argues that even at the commencement of the Act, in the year of 1956, Povunammal was in possession of the suit property as per the Will from 1954 onwards. Therefore, the limited interest would be enlarged into absolute right and the vendor of defendant viz., Povunammal has got pre-existing right in the property on the commencement of Hindu Succession



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Act as per Sec.14(1), but the trial judge failed to appreciate the said aspect, which clearly amounts to misconception of fact and law, thereby the findings of the trial judge is liable to be set aside. Accordingly, this Second Appeal was admitted on the following question of law :-

*“Whether right is granted to Povunammal, the mother of the appellant is enlarged under Sec.14(1) of Hindu Succession Act or Section 14 (2) applied to the facts of the case?”*

9. The foremost point is to be decided whether the limited right given to Povunammal in respect of 'B' schedule property in the Will executed by Annamalai Pillai deemed to be in lieu of her maintenance and get enlarged into absolute right as per Sec.14(1) of Hindu Succession Act, which is extracted hereunder:-

***“14. Property of a female Hindu to be her absolute property.-***

*(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.”*



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However, it is admitted by both parties that Annamalai Pillai had two wives and during his life time, he executed a Will in respect of his ancestral and self-acquired property on 27.01.1954 through Ex.A2. The dispute is pertaining to a tiled house in the suit property shown as 'B' schedule in the said Will. According to the plaintiff, his father gave life interest to second wife Povunammal, after her death, absolute right was given to this plaintiff and in the year of 2009, the said Povunammal was died. So, as an absolute owner, he claimed delivery of possession from the defendant, who is daughter of Povunammal under the occupation of the suit property. But, as per the contention of defendant, the limited right given to Povunammal through the said Will in the year of 1954 was in lieu of her maintenance, so it enlarged as per Sec.14(1) of Hindu Succession Act. Accordingly, she became absolute owner of the property and the same was sold to her for a valid consideration through the sale deed dated 09.03.1998.

10. But, the learned counsel for plaintiff argues that as per recitals of



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the Will, only a life interest was given to Povunammal to enjoy 'B' schedule property till her life time, thereafter it shall devolve upon the plaintiff absolutely and the intention of testator also not giving the property in lieu of maintenance. So also, the court has to consider the intention of testator by taking into the recitals of entire Will, which is marked as Ex.A2. On perusal of entire recitals of the Will, it would reveal that testator Annamalai pillai suffered with cancer and during his life time, in the year of 1954 he executed a Will bequeathing his ancestral and self-acquired property in favour of his two wives and their children. Admittedly, A, B, C, D and E schedules are forming in the Will. 'A' schedule was given to first wife with life interest, thereafter, it shall devolve upon to her son/plaintiff. 'B' schedule was given to Povunammal with absolute right, thereafter, it devolves upon the plaintiff absolutely. But, on the next Page No.4 of the Will, there is a recital stating that second wife Povunammal was 5 months pregnancy at the time of execution of Will and if she gave birth to a male child, A, B, and E schedule properties has to be divided into equal shares. Accordingly, half share devolves upon son of first wife and remaining half share devolve upon to a son born to second wife absolutely and also other recitals reveal that if a



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female child born to her, amount has to be given to her. Apart from that, daughter of first wife as well as daughters of second wife also given absolute right by appointing their mother as guardian and both mothers permitted to enjoy the properties without making any encumbrance. Thereafter, those properties devolve upon daughters absolutely. That apart, he has also deposited some amount in the bank and they were permitted to use the same for the marriage expenses of daughters and also given share in 'E' schedule property with other deposits and other amount. Therefore, on considering entire recitals of Will, the intention of testator is that his both wives were given life interest to enjoy the property, thereafter, those properties should go to son and daughters absolutely. Further, with regard to marriage and educational expenses, both mothers were given permission to enjoy the income derived from the said property. Hence, the intention of testator is that after his demise, his two wives are bound to look after their minor children as a guardian without making any encumbrance, after they attained majority, the properties should devolve them absolutely. Furthermore, the intention of testator is that his children viz., son and daughters should become absolute owners of the property after his life time thereby,



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Povunammal, being second wife of testator, was appointed as a guardian to maintain the property with life interest clearly indicates that she was permitted to enjoy the property until her life time and such right cannot be deemed as a right given in lieu of her maintenance, which was rightly appreciated by the first appellate judge. Therefore, Sec.14(1) of Hindu Succession Act is not applicable to the facts of the case. But, the trial judge erroneously concludes that the limited right given to her became a pre-existing right of maintenance and got enlarged under Sec.14(1) of Hindu Succession Act as such is totally erroneous one.

11. The authority relied on by the learned counsel for appellant reported in **2020 SCC Online 584** in the case of ***V.Kalyanaswamy (D) by LRs. and another vs. L.Bakthavatsalam (D) by Lrs. and others***, wherein the Apex Court in para No. 198, which is extracted hereunder :-

*“198. V.Tulasamma v. Sesha Reddy is a judgment rendered by a Bench of three learned Judges. It was a case where the husband of the appellant therein died in a state of jointness with his brother in the year 1939. She obtained a Decree for maintenance. This was followed by execution proceedings*



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*wherein an out of court of settlement took place under which the appellant was allotted scheduled properties which was certified on 30<sup>th</sup> July 1949. However, it was a limited interest with no power of alienation. The suit out of which an appeal arose was filed by the respondent impugning an alienation made by the appellant. On these facts, we notice the following principles have been laid down :-*

*“62. (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*



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*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 right.*

*(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 Sec. 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Sec.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 Sec.14(1) or in a way so as to become totally inconsistent with the main provision.*

*(4) Sub-sec. (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*



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*favour of a female is legally permissible and Sec.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 Sec.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 Sec.14(1) despite any restrictions placed on the powers of the transferee.”*

But, the aforesaid authority is not applicable to the facts of the present case.

12. It is an admitted fact that the life interest given to Povunammal through Ex.A2 is only a life interest till her death. But, the fact reveals that at the time of execution of Will, Povunammal was five months pregnant, so, the testator intended to give share to a male child if born to the said



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Povunammal in A, B and E schedule properties equally along with first wife's son plaintiff herein. In the plaint averment, the plaintiff not stated that Povunammal gave birth to a male child and the said child died within 14 days. But on the side of defendant, to prove the said fact, the defendant produced the death certificate of the said male child, who was born and died on 25.07.1954 and at that time, child was two weeks age old child. So, Povunammal gave birth to a male child and on the birth of the said child, 50% share was devolved upon him as per the terms of the Will. But male child died within two weeks. Therefore, Povunammal as a clause-1 heir of predeceased son, she is entitled 50% in the property as per the Will. Accordingly, she is entitled to 50% share in 'B' schedule property. The Trial judge not appreciated the said aspect, on the other hand, the first appellate judge rightly concludes that as a legal heir of predeceased son, she is entitled to 50% of share in the 'B' schedule property. Accordingly, the said sale deed executed by her in favour of defendant is valid with regard to 50% (half share) and the remaining half share goes to the plaintiff as son of first wife as per the recitals of the Will.

13. The authority relied on by the learned counsel for respondent



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reported in **2010 (6) CTC 547** in the case of **Gaddam Ramakrishnareddy and others vs. Gaddam Rami Reddy and others**, wherein the Apex

Court held as follows to indicate the intention of testator :-

*“Hindu Succession Act, 1956 (30 of 1956), Section 14(1) – Life estate created by husband – wife managing properties in question -Donee's desire was that property should ultimately go to son – Right of wife does not blossom into an absolute right – Right was created for wife for first time and Settlement deed, but not in lieu of maintenance – Hence, provisions of Section 14(1) have no application.”*

14. Furthermore, the plaintiff relied on a partition deed stating that it was executed in the year of 1999 during the life of Povunammal, through which she received a sum of Rs.4,15,000/- for her share and given up her right in the property. Accordingly, the Will was go-bye, thereby, Povunammal has no right to convey the property to the defendant, but admittedly, before the alleged partition held in the year of 1999, Povunammal sold the property in the year of 1998 itself. Furthermore, there is a discrepancy with regard to execution of partition deed, in which there



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are corrections, it was not properly explained by the plaintiff. Accordingly, no share was allotted to Povunammal in the said partition deed. As discussed above, after execution of the sale deed, the partition was effected, at that time, she has no share in the property. So, partition deed would not bind Povunammal nor the defendant. Therefore, the findings of first appellate judge that plaintiff is entitled to only half share and remaining half share belongs to the defendant in respect of suit property is valid one and it was rightly concluded, which needs no interference by this court. Accordingly, the question of law is answered.

15. The another authority relied on by the learned counsel for respondent reported in **2022 SAR (Civ) 267 /2022 SAR Online (SC) 79** in the case of **Jogi Ram vs. Suresh Kumar and others**, wherein the Apex Court held as follows with regard to applicability of Sec.14(2) of the Act, which squarely applicable to the facts of the present case :-

*“B. Hindu Laws – Hindu Succession Act, 1956 – Secs. 14(1), 14(2) – Will in favour of wife – absolute estate or limited estate – Testator wished to create only a limited life interest in*



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*favour of the second wife with the son inheriting the complete estate after her life time – He had taken all care for the needs of her maintenance by ensuring that the revenue generated from the estate would go to her alone – Sec.14(2) would apply in such a scenrio and not the Sec. 14(1) of the Act – Wife only obtained a life interest under the Will and not the absolute estate – Order of the High Court set aside.”*

Accordingly, Second Appeal is dismissed as no merit. Findings of the 1<sup>st</sup> appellate judge confirmed. Suit is decreed partly, plaintiff is entitled half share in suit property. No costs. Consequently, the connected Miscellaneous Petition is closed.

**21.07.2023**

Index : Yes / No  
Internet : Yes / No  
Speaking/Non-speaking order  
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To

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1. The III Addl. District Judge,  
Vellore at Tirupattur.

2. The Subordinate Court,  
Vaniyambadi.

**T.V.THAMILSELVI, J.**

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Pre-delivery judgment in  
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