



S.A.No.1259 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2024

PRONOUNCED ON : 26.03.2024

CORAM:

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.No.1259 of 2009
and MP.No.1 of 2009

Valliammal

.... Appellant

vs.

1. Visalakshi (Deceased)

W/o.C.Velusamy

2. Rajeswari

3. Balamurugan

4. Ramkumar

5. Muthusamy (died)

6. Visalakshmi

W/o.P.Ramasamim

7. Banumathi

8. Ganesan (died)

9. G. Gomathi

10. G. Vengadeswari

11. G. Dhanagopal

(RR2 to 4 already on record as LRs

of the deceased 1st respondent i.e.,

Visalakshi, as per the memo dated

24.08.2017 and as per the order of

Court dated 24.08.2017 in SA.1259/2009

by SBJ)

(RR6 to 8 already on record as LRs

of the deceased 5th respondent i.e., Muthusamy

as per the memo dated 24.08.2017 as per the

order of Court dated 24.08.2017 in SA.1259/2009

by SBJ)

(RR9 to 11 brought on record as LR's of



the deceased R8 vide Court order dated
30.09.2022 made in CMP.No.12697/2022
in SA.No.1259/2009 by KRJ)

... Respondents

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PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 03.08.2009 passed in A.S. No.135 of 2000 on the file of First Additional District Judge of Coimbatore, confirming the judgment and decree dated 31.03.2000 made in O.S. No.139 of 1991 on the file of Subordinate Judge, Tiruppur.

For Appellant : Mr.V.Venkatasamy
For R1, R5 & R8 : Died
For R2 to R4 : Mrs.T.R.Gayathri for
M/s.Sarvabhauman Associates
For R6, R7 &
R9 to R11 : Mr.R.Ragavendran

JUDGMENT

The plaintiff in the suit is the appellant in the above appeal. The second appeal has been filed against the judgment and decree dated 3.8.2009 in AS.No.135 of 2000 on the file of First Additional District Judge of Coimbatore, confirming the judgment and decree dated 31.03.2000 in OS.No.139 of 1991 on the file of Sub ordinate judge, Tiruppur. The first and second defendants died pending suit and the



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defendants 3 to 10 were impleaded as legal heirs in the suit.

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2. Pending appeal, the first respondent died and respondents 2

to 4 have been recorded as legal heirs. The fifth respondent also died and the respondents 6 to 8 have been recorded as his legal heirs. Further, the 8th respondent in the appeal also died and the respondents 9 to 11 have been impleaded as his legal heirs.

3. For the sake of convenience, the parties are referred to as per the ranking before the trial court.

The brief facts, as per the averments in the plaint, are as under:

4. According to the plaintiff, the suit properties originally belonged to the plaintiff's father Ramasami Asari. He had executed a registered settlement dated 23.04.1919, in favour of his wife Angammal. In the settlement deed he had created life interest in favour of Angammal by which she can enjoy the properties in her life time and after her demise, the properties shall vest with the heirs of Angammal and Ramasami Asari. According to the plaintiff, Ramasami Asari died on 17.02.1940 and his wife Angammal also died intestate in or about 1957. She died leaving behind a son, Chidambara Asari and two daughters, the plaintiff herein and the second defendant Govindammal. Chidambara Asari died in the year 1952 leaving behind his son Velusamy, the first



defendant herein. According to the plaintiff, after the death of her mother Angammal, the plaintiff and the defendants are the legal heirs to succeed the properties mentioned in the settlement deed and the suit properties devolved on the plaintiff and the defendants and they have been enjoying the properties in common. It is the case of the plaintiff that the first defendant was making payment to the plaintiff from the income derived from the lands. Later, the defendants became inimical and acted against the plaintiff's interest. The plaintiff demanded for amicable partition. Since the same was not satisfied, the plaintiff issued legal notice on 26.2.1991, for which, the evasive reply was made and as such, the plaintiff filed the suit for partition and injunction.

5. The first defendant resisted the suit by filing the written statement stating that the necessary stamp has not been paid as per Sec.37(2) of the Court Fees Act. As the plaintiff has no right or in possession of the suit property, the suit is not maintainable. It is the case of the first defendant that the suit properties are originally ancestral properties of his grandfather Ramasami Asari and Ramasami Asari had only son Chidambara Asari, who is the father of the first defendant. In the ancestral property, Chidambara Asari is entitled to half share in the ancestral property by birth and Ramasami Asari executed a settlement



deed in favour of his wife Angammal by settlement deed 23.04.1919 in

Ex.A.1. As per the settlement deed, Angammal was only given a life time interest and she was entitled to enjoy the property during the life time and thereafter the property got vested with Chidambara Asari and his son, the first defendant. It is the further case that Ramasami Asari died in the year 1940 and his wife Angammal also died even prior to the year 1950. Neither the plaintiff nor his sister, the second defendant Govindammal had any right in the ancestral property as per the law prevailed in the year 1940. Even when he was five years old, his father Chidambara Asari and his grand mother Angammal have executed the sale deed dated 01.05.1943 in favour of Palani gounder and others, selling an extent of 11.70 acres of land for valuable consideration and from the sale consideration they have repaid the debts incurred by Ramasami Asari and thereafter have recovered the properties from mortgage. After the purchase, the heirs of Marappa gounder who had purchased the properties had sub divided the properties long ago and they have been in possession and enjoyment of the properties. The suit for partition filed by the plaintiff without impleading those purchasers is barred for non joinder of necessary parties. Further, the Chidambara Asari during his life time had sold further extent of 0.85 acres in favour



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of one Subbaraya Gounder, 30 years ago and he has also not been made
as party to the suit.

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6. It is the further case of the first defendant that Chidambara

Asari died on 14.07.1954 and Ramasami Asari died in the year 1940. As per the law in force, at that time, the daughters of Ramasami Achari does not have any right in the ancestral properties. It is the further case of the defendant that after the sale has been executed by Angammal along with his son Chidambara Asari, the balance lands measuring an extent of 2.25 acres is vested with the first defendant. Further, in respect to the lands of 15.33 acres which he inherited as the son of Chidambara Asari, the second wife of Chidambara Asari filed a suit seeking partition in OS.No.695 of 1959 on the file of District Munsif Court, Tirupur and the suit was decreed on 22.02.1961 granting half share of the property to her. The appeal filed by the first defendant in AS.No.106/92 was dismissed on 06.10.1962 confirming the decree for partition. Thereafter, the Advocate commissioner was appointed and the properties were partitioned on 21.09.1964 and pursuant to the sub division, the first defendant became entitled to the extent of 8 acres and 82.5 cents. It is the further case of the first defendant that with respect to 8.82 ½ acres allotted to him by settlement deed dated 22.08.1991, an extent of 1 acre had given in favour of his daughter and thereafter pursuant to the partition entered by the first defendant with his two son Balamurgan and



Ramkumar on 29.05.1992, 6.25 acres were allotted to his sons each and an extent of 1.12 acres were allotted to the first defendant and the first defendant is in possession and enjoyment of his 1.12 acres of land alone. According to the first defendant, the plaintiff or the second defendant had no right over the property and even assuming that they had any right and the same has been lost due to limitation and also by adverse possession.

7. The 9th defendant had filed separate written statement stating that Ramasami Asari has executed a registered settlement deed dated 23.04.1919 in Ex.A.1 in favour of his wife Angammal. According to her, her mother Govindammal, one of the legal heirs of Angammal is entitled to 1/3rd share in the suit properties. As per law, this defendant is also deemed to be in the joint possession of the suit properties. She has supported the case of the plaintiff for granting a decree of 1/3rd share to the plaintiff.

Evidence and Documents:

8. During Trial, on the side of the plaintiff, the plaintiff examined herself as PW.1, examined another witness PW.2 and marked Exs.A1 to A6. On the side of the defendants, the fifth defendant was



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examined as DW.5 and one Muthusamy Gounder was examined as

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DW.2 and one Banumathi was examined as DW.3 and marked Exs.B.1 to Ex.B.38.

9. Considering the pleadings, the following issues and additional issues were framed by the Trial Court.

1. Whether the plaintiff is entitled for partition?
2. Whether the 9th defendant is entitled to claim partition of 1/3rd share?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the plaintiff is entitled to permanent injunction?
5. To what other relief, the plaintiff is entitled to?

Additional Issues:

1. Whether the suit is barred by limitation of time?
2. Whether the plaintiff is disenfranchised on the principle of expropriation?

Findings of the Court below:

10. The trial court after analysing the documents and evidence, by judgment and decree dated 31.03.2000, dismissed the suit.

The Trial court rejected the document in Ex.A.1 as no co-parcener under



the Mitakshara system can, except the consent of the other co-parceners, dispose of his undivided interest in joint family property either by way of gift or by a transfer. The trial court found that since admittedly, the suit properties were ancestral properties, the gift deed executed by Ramasami Asari in Ex.A.1 is not valid in law and it will not give any right in favour of Angammal. The Trial Court also found that if any right had come to Angammal in Ex.A.1, since Angammal died prior to 1956 that is, before coming into the force of Hindu Succession Act, the property covered in Ex.A.1 came to be vested with Chidambara Asari and the first defendant. The Trial court also found that through Ex.B.1 sale deed that major portion of the properties covered under Ex.A.1 deed has been sold. The plaintiff had filed the suit seeking for partition in respect of those properties also without impleading the purchasers as a party to the suit and therefore the suit is also bad for non joinder of necessary parties. The trial court also found that the plaintiff is not in joint possession of the property and therefore the present suit filed by the plaintiff is hit by Section 27 of the Limitation Act. Further, the trial court found that from the evidence of DW.1 and the documents in Ex.B.2 to B7, Ex.B.13 to B.19 and Ex.B.22 to B.38, the defendants 3 to 6 have been in possession and enjoyment of the property for more than



12 years without any interference, to the knowledge of the plaintiff and therefore the plaintiff cannot maintain the suit, as the defendant perfected the title by adverse possession.

11. Aggrieved by the same, the plaintiff filed appeal in AS.No.135 of 2000 on the file of First Additional District Judge, Coimbatore. The lower appellate court after reappreciating the evidence, dismissed the appeal by judgment and decree dated 03.08.2009. The lower appellate court found that mere admission of the parties would not be sufficient to give right to the parties under invalid documents and it is well settled proposition of law that under mitakshara co-parcenary system, gift of co-parcenary property is totally prohibited, except for the reasonable extent for the pious purposes. The lower appellate court also found that all along the plaintiff claimed her right on the basis of settlement and there was absolutely no evidence to show whether the deed was executed by Ramasami Asari by pre-nuptial promise and whether such promise was given at the time of marriage and further there is no evidence available on record. Even the deed in Ex.A.1 has not been executed at the time of marriage, but executed long after that is even after the birth of Chidambara Asari. The lower appellate court also found that from the evidence of PW.1, Angammal



died even prior to 1954 and dismissed the appeal. Aggrieved by the concurrent findings of the courts below, the plaintiff is before this Court on appeal.

Substantial questions of law:

12. By order dated 4.9.2017, the second appeal is admitted on the following substantial questions of law:

“(1) Whether the courts below are correct in law in holding that Ex.A.1 document is a gift deed after concluding that Ex.A.1 was executed by the appellant's father in favour to fulfill the promise made at the time of marriage?”

“(2) Whether the courts below have committed an error in law in deciding the case without considering the transfer of right in favour of appellant's mother under document Ex.A.1 settlement deed to fulfill the promise made at the time of marriage by her father is for valid consideration or not?”

“(3) Is it not the ancestral property lost its status of co-parcenary property after making oral partition which fact has not been disputed by anyone at any point of time?”

“(4) Is it not the appellant's mother acquired absolute right in the properties transferred



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under Ex.A.1 as Sridhana property especially when the transfer was made to fulfill the pre-nuptial promise?

(5) Whether the courts below are correct in law in denying a share to the appellant in her mother's property which is absolutely vested with the mother under Ex.A.1?"

Submissions on both sides:

13. The learned counsel for the appellant submitted that the suit schedule properties are the ancestral properties of Ramasami Asari. At the time of marriage with Angammal, he had promised to provide security to his wife for living and therefore, after marriage in fulfillment of such pre nuptial promise, the father made a division in the property and executed the settlement deed in respect of his undivided half share on 23.04.1919 in favour of his wife Angammal in Ex.A.1. The learned counsel further contended that Angammal was given only life time interest without any power of alienation and after her life time the properties will revert back and vested with the legal heirs of Ramasami Asari and Angammal as per the deed in Ex.A.1. As such the plaintiff being a daughter along with her sister second defendant and the first defendant's father Chidambara Asari are entitled for partition in respect of 1/3rd share in the suit property.



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14. The learned counsel further contended that the document in Ex.A.1 is only a settlement deed and it has been executed by Ramasami Asari with respect to consideration for marriage. As per Section 2(24) of the Indian Stamp Act 1899, the settlement has been defined as any non-testamentary disposition, in writing, of movable or immovable property made in consideration of marriage. Therefore relying on Section 2(24)(a) of Indian Stamp Act, the learned counsel contended that since Ex.A.1 deed was executed in consideration of marriage i.e, is for the purpose of fulfilling the pre-nuptial promise made at the time of marriage, Ex.A.1 can never be construed as a gift but it is only a settlement deed. Further as per Section 2(d) of the Indian Contract Act, consideration is defined which includes both past and future consideration. In such circumstances, the learned counsel contended that Ex.A.1 is only the settlement deed and the courts below erroneously considered it as gift deed.

15. The learned counsel for the appellant relied on the following decisions in support of his contentions,

(i) Kulasekaraperumal Vs Pathakutty Thalevanar and

others reported in **AIR 1961 MAD 405** for the proposition that a Hindu



Co-Parcener governed by Mitakshara law may dispose of his undivided ancestral properties by contract and convenience but it is equally well settled that a gift or will by a coparcener in a Mitakshara family of his undivided interest is wholly invalid.

(ii) **Putturangamma Vs M.S. Ranganna** reported in **AIR 1968 SC 1018** for the proposition that, it is not necessary that there should be an agreement between all the co-parceners for the disruption of the Joint Status. It is also immaterial in such a case whether the other co-parceners have give their assent to the separation or not. It is only required that the member of the Joint Hindu Family seeking to separate himself must make known his intention to other member of the family from whom he seeks to separate.

(iii) **P.Ram Mohan Vs Lalitha Raghuraman and others** reported in **AIR 1976 MAD 333** for the proposition that in respect of construing a document, there cannot be a vacuum in the interregnum, where there is a life estate followed by an absolute estate because the residue must rest somewhere and what is deferred is only the possession of the properties in favour of the settlees and not the vesting of interest.



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(iv) **Prabhakar Gones Prabhu Navelkar (Dead) through legal representatives and others Vs Saradchandra Suria Prabhu Navelkar (Dead) through legal representatives and others** reported in **2020 (20) SCC 465** for the proposition that, when a vested right is established such as ownership, it can be divested only by sale or gift and mere latches or standing alone may not be sufficient to extinguish title. Title can be lost only when estoppel is established and mere saying that



a person has abandoned his property does not lead to extinguishing of vested right to ownership in property.

16. According to the learned counsel for the appellant, through Ex.A.1, on the demise of the plaintiff's father Ramasami Asari, the plaintiff, the second defendant and Chidambara Asari, being the legal heirs of Ramasami Asari and Angammal, had acquired the vested interest in the property.

17. The learned counsel for the appellant further contended that the extent of 11.70 acres of land had been sold by the first defendant's father Chidambara Asari for himself and as guardian of a minor son first defendant along with his mother Angammal. Since it has been sold to discharge the debt incurred by Ramasami Asari, it is the pious obligation of son to discharge the debt and therefore the land sold has to be deducted from the undivided common property. The learned counsel further contended that since it is the suit for partition and if there had been any alienation, the alienated portion could be allotted to the sharers who sold the properties on equity and the purchasers need not be impleaded as parties in the suit. Further, pending suit if any alienation takes place it will not bind the parties and therefore the suit is not bad



for non-joinder for necessary parties.

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18. The learned counsel further contended that the courts below have wrongly applied Section 27 of the Limitation Act and have decided that the plaintiff is ousted from the suit property. When there is vested interest in favour of the plaintiff through Ex.A.1 and the first defendant had not taken the plea of ouster, it cannot be considered in the present suit for partition.

19. The learned counsel for the appellant further contended that the courts below have wrongly interpreted the documents in Ex.A.1 and therefore, the findings arrived at by the Courts below are perverse and sought for interference of this court to allow the second appeal.

20. Per contra, the learned counsel for the respondents submitted that the prayer in the suit itself is only in respect of 15.50 acres which was been given by Ramasami Asari in favour of his wife Angammal leaving the life time interest. When the suit itself has been filed only in respect of a half share, the appellant is precluded from making any claim or document in respect of other half share of the property of Chidambara Asari, which is not the subject matter of the



present suit.

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21. The learned counsel further submitted that all along the plaintiff's case was on the ground that since Angammal died after 1956, the plaintiff is entitled for a share in the property. For the purpose of establishing the same, after the filing of the present suit, they have obtained birth certificate based on the orders of the Judicial Magistrate in Ex.A.2 to show that the Angammal died after the year 1956. But, however, the order of the Judicial Magistrate based on which the birth certificate Ex.A.2 was granted has been revoked by the order of the Civil Court under the decree filed in Ex.B.12. Further, PW.1, in her evidence stated that the first defendant got married on 1955 and during the marriage Ramasami Asari and Angammal was no more. Further, Chidambara Asari died on 14.07.1954 and even prior to his death, her mother Angammal died. Therefore, from the admission of PW.1 and the Civil Court decree in Ex.B.12, it is evident that Angammal had died prior to 1954 itself. Pursuant to her death, the plaintiff and the second defendant were not entitled to any share in the ancestral properties. Therefore, the property got vested with Chidambara Asari, the son the first defendant and the plaintiff is not entitled to claim any share in the



suit property.

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22. According to the learned counsel for the respondents, Chidambara Asari along with his mother Angammal and also representing the first defendant minor had sold the extent of 11.70 acres of land out of the suit property on 01.05.1943 and the plaintiff knowing very well never questioned the same and thereafter filed the present suit in the year 1991, almost after a period of 41 years claiming for partition with respect of suit property, including the property sold, without making the purchasers of the properties as parties in the suit. Therefore, the courts below have rightly found that the suit is bad for non joinder of necessary parties.

23. Further, the learned counsel for the respondent contended that when it is admittedly the ancestral property, Ramasami Asari cannot unilaterally make any partition without consent of the co-parcener. The document executed by him in Ex. A1 does not create any right in favour of his wife Angammal and the courts below have rightly found that the document is a gift deed and it does not create any interest as a gift of the ancestral property executed is not valid. Further, the document in Ex.A.1 has not been executed at the time of marriage but it is the



document executed after the plaintiff, the second defendant and Chidambara Asari were born and there is no evidence in respect of performance of the marriage or any promise made during marriage and therefore the courts below have rightly concluded that the deed in Ex.A.1 is a gift deed and it is invalid document and the same has been executed by the co-parcener by gifting the property which is totally forbidden under the texture of co-parcenary system.

24. The learned counsel further submitted that even assuming that the plaintiffs got right in the property on the death of Angammal in the year 1954, the plaintiff has never questioned the sale of the property executed by Angammal along with Chidambara Asari for more than nearly 40 years and had not taken any steps in respect of further sale of the properties done, partition effected and also the mutation of revenue records done in favour of the purchasers and the sharers of the properties. The plaintiff if at all having any right has been ousted from the suit property and she was never in the joint possession of the properties. The courts below have rightly found that the suit is not maintainable under Section 27 of the Limitation Act. She further submitted that no substantial questions of law arises in the above appeal for consideration of the court and therefore sought for dismissal of the



above appeal.

Analysis:

25. Admittedly, the suit properties were the ancestral properties of Ramasami Asari. The plaintiff, Chidambara Asari and the second defendant Govindammal are the legal heirs of Ramasami Asari and his wife Angammal. Originally there was a total extent of 30.66 acres of land which were the ancestral properties of Ramasami Asari and his son Chidambara Asari. The document in Ex.A.1 dated 23.04.1919, has been executed by Ramasami Asari in favour of his wife Angammal by giving life time interest in her favour and that after her life time it will revert back to the legal heirs of the Ramasami Asari and Angammal. As per Ex.A.1, it is the ancestral properties and half of the undivided share in the ancestral properties belongs to the minor son Chidambara Asari and the balance half share of the properties is given to his wife Angammal. The recitals in the deed states that as per the life time interest given in favour of Angammal, she can enjoy the property and use the income from the properties for the expenses of the family and enjoy the same without power of alienation. After her life time, the properties will revert back either to Ramasami Asari or to the legal heirs.

In Ex.A.1 correction had been done stating that at the time of marriage



the Ramasami Asari has agreed to provide safeguards in favour of his wife as requested by her parents and as per the promise and since Angammal was living a faithful life in spite of not fulfilling the promise, the deed is executed.

26. Now, the whole issue in the second appeal revolves around the document in Ex.A.1. In fact all the substantial questions of law framed pertain to the nature of document executed in Ex.A1. The appellant contends that the document is only a settlement deed and the same has been executed by Ramasami Asari in fulfillment of the prenuptial promise. The appellants counsel argued that the plaintiff claim right over the property not by survivorship but by the right accrued under Ex.A1, as it is a settlement deed. On the contrary, the claim of the defendant is that it is a gift deed and Ramasami Asari had no right to execute any gift in the co-parcenary property and cannot make any partition unilaterally without the consent of other coparcener and the gift created in favour of Angammal in respect of half share in the coparcener property is prohibited and therefore the document is invalid. As such it has to be seen as to whether the document in Ex.A.1 executed by Ramasami Asari in favour of his wife, is for consideration in



fulfilling the prenuptial promise or a gift towards love and affection.

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27. At this juncture, it will be useful to refer the decision of the Hon'ble Supreme Court in *Ammathayi @ Perumalakkal & Another Vs. Kumaresan @ Balakrishnan & Others*, reported in *AIR 1967 SC 569*. Paragraph 10 and 11 are usefully extracted hereunder:

“10. As to the contention that Rangaswami Chettiar was merely carrying his father's wishes when he made this gift in favour of his wife and that act of his was a matter of pious obligation laid on him by his father, we are of opinion that no gift of ancestral immovable property can be made on such a ground. Even the father-in-law, if he had desired to make a gift at the time of the marriage of his daughter-in-law, would not be competent to do so insofar as immovable ancestral property is concerned. No case in support of the proposition that a father-in-law can make a gift of ancestral immovable property in favour of his daughter-in-law at the time of her marriage has been cited. There is in our opinion no authority to support such a proposition in Hindu law. As already



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observed, a Hindu father or any other managing member has power to make a gift within reasonable limits of ancestral immovable property for pious purposes, and we cannot see how a gift by the father-in-law to the daughter-in-law at the time of marriage can by any stretch of reasoning be called a pious purpose, whatever may be the position of a gift by the father or his representation to a daughter at the time of her marriage. One can understand such a gift being made to a daughter when she is leaving the family of her father. As it is the duty of the father or his representative to marry the daughter, such a gift may be and has been held by this Court to be for a pious purpose. But we see no pious purpose for such a gift by a father-in-law in favour of his daughter-in-law at the time of marriage. As a matter of fact the daughter-in-law becomes a member of the family of her father-in-law after marriage and she would be entitled after marriage in her own right to the ancestral immovable property in certain



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circumstances, and clearly therefore her case stands on a very different footing from the case of a daughter who is being married and to whom a reasonable gift of ancestral immovable property can be made as held by this Court.

11. Learned counsel for the donee-appellant further refers to the fact the gifts made in token of love by her father-in-law to a daughter-in-law are permitted and become her stridhan property. That is so. But that does not mean that a father-in-law is entitled to make a gift of ancestral immovable property to a daughter-in-law so as to convert it into her stridhan. Generally such gifts are of movable property. But even if gifts of immovable property in such circumstances are possible, the two provisions must be read harmoniously. If therefore Hindu law does not permit a father-in-law to make a gift of ancestral immovable property to his daughter-in-law he cannot make such a gift for purposes of stridhan. Further if gifts by the father-in-law to the daughter-



in-law which become stridhan include gifts of immovable property, they can only refer to such immovable property as is not ancestral immovable property, for that is the only way in which the two provisions can be reconciled. We have therefore no difficulty in holding that there is no warrant in Hindu law in support of the proposition that a father-in-law can make a gift of ancestral immovable property to a daughter-in-law at the time of her marriage. If that is so, we cannot set how what the father-in-law himself could not do could be made into pious obligation on the son as is claimed in this case, for that would be permitting indirectly what is not permitted under Hindu law directly. Further in any case gifts of ancestral immovable property can only be for pious purposes, and we doubt whether carrying out the directions of the father-in-law and making a gift in consequence can be said to be a gift for a pious purpose, specially when the father-in-law himself could not make such a gift. We are therefore of



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opinion that this gift cannot be upheld on the ground that Rangaswami Chettiar had merely carried out the wishes of his father indicated on the occasion of the marriage of Ammathayee. ”

28. It is held in *Srinivasa Padayachi Vs. Parvathiammal*, reported in **1969 (2) MLJ 597**, after referring to the Ammathayi's case cited supra, that any gift executed in the coparcenary property is prohibited under Mitakshara law, is not valid and will not even bind the share of the donor. As such no co-parcener under the Mitakshara law can, except with the consent of the other co-parcener, dispose of undivided interest in the joint family either by way of gift or will. But it is also held that an alienation done for marriage is a valuable consideration within the rule of Hindu law and it is not a gift. But however in that case, the settlement was made in consideration of promise of marriage, just prior to the marriage and the settlement was followed by the marriage. It was further observed therein that there is also no question of love and affection at that stage.

29. Further the Hon'ble Supreme Court, even in the recent



decision in *K.C.Laxmana Vs. K.C.Chandrappa Gowda & Another* reported in **2022 SCC OnLine SC 471**, following the Ammathayi's case has reiterated that settlement deed/ gift deed in regard to ancestral property, executed out of love and affection, is not valid and will not come within the scope of 'pious purpose'.

30. In the case on hand, on perusal of the document, it reveals that Ex.A.1 has not been executed at the time of the marriage. This document has been executed after the birth of plaintiff, the second defendant and the father of the first defendant, Chidambara Asari. Admittedly the properties covered under Ex.A1 are ancestral properties. When Ex.A1 was executed on 23.04.1919, Ramasamy Asari and Chidambara Asari were co-parceners and there was no division in the joint family.

31. It could also be seen from Ex.A1 that initially the deed has been executed out of love and affection by Ramasami Asari in favour of his wife in respect of $\frac{1}{2}$ share in the ancestral properties. But later a correction has been made in Ex.A1 by inserting the recitals that since a promise was made at the time of marriage to provide her a security but



the same was not done, however inspite of the same his wife Angammal lived a faithful matrimonial life and on the request made by her, the deed is executed. There is no evidence let in by the plaintiff about the marriage or the promise made at the time of marriage. There is also no pleading in respect of the promise made at the time of marriage and the plaintiff has not taken any steps to establish the fact that Ex.A1 was executed towards consideration of the pre-nuptial promise, particularly when the deed has not been executed at the time of marriage but after several long years after marriage.

32. In the absence of pleadings or any evidence let in by the plaintiff in respect of the marriage or the prenuptial promise made at the time of marriage and further the averments in the document also reads that even though the promise during marriage was not fulfilled, in view of the faithful matrimonial life lived by Angammal, Ex.A1 has been executed. In such circumstances Ex.A1 has to be construed only as a settlement deed executed by Ramasami Asari in favour of his wife Angammal for love and affection and not for pre nuptial promise, to be taken as executed for consideration. The parties also never treated Ex.A1 as settlement deed executed for the consideration of the pre nuptial



promise, but only executed by giving a life time interest in favour of Angammal towards the love and affection.

33. In fact even according to the plaintiff, as per Ex.A1, Angammal was in possession and enjoyment of the property. She had died in the year 1956, after coming into the force of Hindu Succession Act and therefore pursuant to her death, the plaintiff along with Chidambara Asari and the second defendant by inheritance had become the owner of the 1/3 rd share of the property. To support their case, the plaintiff after filing the suit has obtained the order from the Judicial Magistrate Court and procured the birth certificate in Ex.A2. With the strength of the same, she contended that Angammal died only after 1956. But however, it could be seen that the said order of Judicial Magistrate based on which the birth certificate in Ex.A2 was issued was questioned in Civil proceedings and by the document filed in Ex.B.12 decree, the order was revoked and thereby the birth certificate issued in Ex.A.2 has become irrelevant. Further, apart from the above document, PW.1 in her evidence has clearly stated that when her brother's son, the first defendant Velusamy got married in the year 1955, her father Ramasami Asari and mother Angammal were not alive. She has also specifically



admitted that her brother Chidambara Asari, died on 14.07.1954 and even prior to his death, her mother Angammal had died. From the evidence of PW.1 and the document in Ex.B.12, it could be concluded that the plaintiff's mother Angammal died even prior to 1954 that is before coming into force of the Hindu Succession Act.

34. The plaintiff has contested the suit stating that Angammal had died after 1956 and also procured the birth certificate in Ex.A.2 by obtaining the orders from the Judicial Magistrate and it is her specific case that since Angammal died after 1956, the plaintiff has inherited share in the suit property. The plaintiff specifically took that stand only because if Angammal had died prior to 1956 then she will not be entitled to any share as in view of then prevailed law, only the father of the 1st defendant Chidambara Asari will be entitled to the suit property by survivorship. Therefore the plaintiff herself has treated the document in Ex.A1 has been executed by Ramasamy Asari in favour of Angammal only as a gift. But after the birth certificate in Ex.A.2 was cancelled by the decree in Ex.A.12 and further from the evidence of PW.1 it was found that Angammal died prior to 1954, as rightly observed by the lower appellate court, the appellant has shifted her stand in the appeal



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and contends that the document in Ex.A.1 is only a settlement for prenuptial promise and not a gift and therefore valid.

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35. Further plaintiff claims that since Ex.A1 is not a gift, she claims share in the suit property only based on the settlement executed in favour of Angammal, as after her death in view of the recitals in Ex.A1, the property reverts back to the legal heirs of Ramasami Asari and Angammal, ie. plaintiff, the second defendant and Chidambara Asari. From the evidence available on record it could be seen that Ex.A1 is the settlement deed executed in favour of Angammal only out of love and affection and it is not proved that it is executed for any pre nuptial promise. Therefore in view of the settled proposition of law, Ex.A1 settlement deed executed in respect of the ancestral property in favour of Angammal for love and affection, is only a gift and not valid. The Settlement has not been executed for any valid consideration but only for love and affection, as she was a dutiful wife and the deed has been executed not prior to marriage but after several long years after the children were born, by only giving a life time interest alone. The substantial questions of law are answered accordingly.

36. The plaintiff claims that since Angammal was only given a life time interest through document in Ex.A.1 and she had no power of alienation, on the date of death of Angammal, the properties revert back to the legal heirs of Ramasami Asari and Angammal, since Ramasami



Asari predeceased Angammal. It is their further case that on the date of death of Angammal, the suit properties got vested in the hands of the plaintiff, the second defendant and Chidambara Asari. It has already been held that the Ex.A1 is not valid.

37. Even assuming, that the plaintiff got any right, it is seen that out of the suit properties, an extent of 11.70 acres of land has been sold by Chidambara Asari along with Plaintiff's mother Angammal by sale deed 01.05.1943 in Ex.B.1. When 11.70 acres of land out of 15.33 acres of land in the suit property has been sold in the year 1943 and Angammal also died in the year 1954, the plaintiff has never questioned the sale executed by her mother and brother and all along remained silent and has not made any claim over the suit property.

38. This Hon'ble Court in *Puniyavathi & Another Vs. Pachaiaammal & Others*, reported in **2022 (4) CTC 590**, by relying on *Vidya Devi @ Vidya Vati (Dead) by LRS Vs. Prem Prakash & Others*, reported in **(1995) 4 SCC 496**, held that the right gets extinguished under Section 27 of the Limitation Act. Paragraph 24 is usefully extracted hereunder:



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“24. Applying the above principles to the instant case, this court finds that the conduct of the plaintiffs approaching the Court 31 years after opening of succession and 18 years after the division of properties among the brothers naturally leads to an inference that they have been ousted and with their knowledge the defendants were in enjoyment of the property exclusively adverse to the plaintiffs for more than the period prescribed under Article 65 of the Limitation Act which prescribes 12 years period as limitation for possession of immovable property or any interest therein based on title. The time from which the period begins to run, is when the possession of the defendant becomes adverse to the plaintiff. Therefore, their right gets extinguished under Section 27 of the Limitation Act, 1963, which reads as below:-

“27. Extinguishment of right to property:-

At the determination of the period hereby limited to any person for instituting a suit for



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possession of any property, his right to such property shall be extinguished.””

39. In the instant case, only in the year 1991, after a period of 47 years after the sale and after a period of 37 years of the death of Angammal, the plaintiff had filed the above suit claiming for partition. Apart from the above sale, further extent of properties has been sold by Chidambara Asari out of the suit property and also the balance properties has been partitioned, from among the legal heirs of Chidambara Asari. The document filed in Ex.B.22 and Ex.B.33 shows that all the revenue records stands in the name of the first defendant and his legal heirs. The plaintiff who had the knowledge of the sale and the possession of the properties were with the purchasers and the legal heirs of Chidambara Asari, had never questioned the same and thereby her right got extinguished. Further, even when she filed the suit for partition in respect of the suit property out of which most of the extent of lands have been sold long ago, the plaintiff has not chosen to implead the purchasers as a party to the suit and therefore the suit is necessarily bad for non joinder of necessary parties.



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40. From the registered sale deed executed in the year 1943, major portion of the suit properties has been conveyed to third parties. Assuming the plaintiff had any right in the suit properties, when the rights of the plaintiff were openly denied in view of the sale executed by Angammal and Chidambara Asari, the plaintiff has not made any objection or complaint before the revenue authority or disputed the sale or the mutation of revenue records made. The plaintiff has not taken any steps as against the possession of the properties by the legal heirs of the first defendant Velusamy and the purchasers of the property and has all along remained as mute spectator. The plaintiff, even after her right has been denied and had the knowledge of the sale executed in the year 1943 and further when her mother Angammal also died before 1954 itself, she has not questioned the sale or taken any steps as against the revenue record or questioned the possession of the purchasers or the legal heirs of the first defendant.

41. The 1st defendant in fact has pleaded that the plaintiff, if at all had any right, has lost the right due to limitation as Angammal along with Chidambara Asari/ the 1st defendant's father had sold major portion of the lands as early in the year 1942 and settled the debts incurred by



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Ramasamy Asari and the defendant and the purchasers are in the possession of the properties. The courts below as such have rightly found that the plaintiff has lost her right to make any claim in the suit property and the suit filed by the plaintiff only in the year 1991 is not maintainable and barred by limitation. In view of the above findings, the other decisions relied on by the appellant is not relevant for the facts of the present case.



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42. The courts below have arrived at a finding of fact, which is based on the materials available on record and are not perverse. The substantial questions of law are answered against the appellant and in favour of the respondents.

43. As such, the Second Appeal stands dismissed. However there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

26.03.2024

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The First Additional District Judge, Coimbatore

2. The Subordinate Judge, Tiruppur



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G.ARUL MURUGAN.J.,

drl

Pre-delivery Judgment in

S.A.No.1259 of 2009
and MP.No.1 of 2009

26.03.2024