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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.10.2024
PRONOUNCED ON: 18.12.2024
CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A.No.331 of 2015

Baliammal (Died)
2.M.Panner Selvam

... Appellant

vs.

1.Valliammal (Died)
2.Murugesha Naicker
3.Mallika
4.Sekar
5.Murugan
6.Manjula
7.M.Srinivasan
8.K.Shanthi

...Respondents

PRAYER:Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 27.02.2015 made in A.S.No.90 of 2013 on the file of the Subordinate Court, Poonamallee and to set aside the decree and judgment dated 05.11.2013 and made in O.S.No.352 of 2003 on the file of the District Munsif Court, Ambattur.

For Appellants

:Mr.A.Palaniappan

R1and R2

:Died

For R3

:Mr.N.Manokaran

for Mr.B.Raj Kumar Ashok Singh

For R4, R5 and R6

:No appearance



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For R7 and R8

:Mr.E.J.Ayyappan

JUDGMENT

The Second Appeal has been filed challenging the judgment and decree, dated 27.02.2015, made in A.S.No.90 of 2013, passed by the learned Subordinate Judge, Poonamallee, confirming the judgment and decree, dated 05.11.2013, made in O.S.No.352 of 2003 passed by the learned District Munsif, Ambattur.

2.For the sake of convenience, the status of the parties are referred as plaintiff and defendants, as referred in the suit.

Brief facts:-

3.The appellant, as plaintiff, had filed the suit in O.S.No.352 of 2003 before the District Munsif Court, Ambattur. The suit was filed for a declaration that the plaintiff is the exclusive and absolute owner of the suit schedule property and for other injunctions.

4.The case of the plaintiff is that the suit schedule property was originally owned by one Gopal Naicker and his wife Seeyathammal. They had two children, who are arrayed as first and second defendants in the suit. Gopal Naicker subsequently married one Dhanapackiathammal, as second wife and during the said marriage, he had settled the suit property in favour of Seeyathammal by way of a settlement deed, dated 13.11.1933 giving life interest and vested remainder to his children.



5. In view of Section 14(1) of the Hindu Succession Act, 1956, the limited interest of Seeyathammal has developed as an absolute estate and she had executed a settlement deed, dated 07.03.1962, in favour of the plaintiff, who is none other than her daughter-in-law, the wife of second defendant. The plaintiff being an illiterate and taking advantage of the same, an extent of 36 cents of land was sold to third party and the sale consideration was received by the second defendant, Murugesu Naicker. The defendants 1 and 2 in connivance had created certain documents by making an attempt to swindle the entire suit schedule property from the plaintiff. As the defendants had created a cloud over the title of the suit property, the appellant had instituted the present suit.

6. The first defendant, who is the daughter of Seeyathammal, had filed a written statement contending that the second defendant in the suit, namely, Murugesu Naicker is none other than the husband of the plaintiff. Gopal Naicker had executed a settlement deed in favour of his first wife, Seeyathammal on 13.11.1933 with a right to enjoy the property till her death and after the death of Seeyathammal, the right will dwell upon her children. The first defendant, Valliammal was born in the year 1943 and the second defendant, Murugesu Naicker was born in the year 1938, who are the children of Seeyathammal.

7. According to the first defendant, Valliammal, the entire property is vested only with the first and second defendants from 1938 and 1943 and they were in possession of



the property. She contended that the plaintiff was not in possession of the suit schedule property and only the first and second defendants, namely, Valliammal and Murugesan Naicker were in possession of the property and asserted that the plaintiff cannot seek any right by virtue of Section 14(1) or 14(2) of the Hindu Succession Act, 1956.

8.The first defendant further contended that the plaintiff and the second defendant, who are husband and wife, had filed the suit in collusion to grab the entire property. Already, the first defendant had settled her interest in the suit schedule property in favour of her daughter, the third defendant, under a registered settlement deed, dated 10.01.1989. The revenue records, namely, patta and adangal for the suit property, were obtained recently with a view to defraud the first defendant's interest in the suit property.

9.The third defendant, who is the daughter of the first defendant, Valliammal, filed her written statement contending that the suit was filed in collusion between the plaintiff and the second defendant, who is none other than the husband of the plaintiff. As the first defendant was born in the year 1943 and the second defendant was born in the year 1938, the entire property is vested only with the defendants 1 and 2 from 1938 and 1943, which according to the third defendant, is not in dispute. It is further contended that a settlement deed was made by the first defendant in favour of her daughter, the third defendant on 10.01.1989.

10.The Trial Court by considering the averments made in the plaint and the



written statement filed by the plaintiff and defendants, had formulated the following issues for consideration:

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“1. Whether the plaintiff is entitled for the relief of declaration as prayed for?

2. Whether the plaintiff is entitled for consequential injunction as sought for?

3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

4. To what other relief?

Additional Issues:

Whether the settlement deed executed by the first defendant in favour of the third defendant, dated 10.01.1989 is valid and bind on the second defendant?

11. On behalf of the plaintiff, the plaintiff examined herself as PW-1 and Ex-A1 to Ex-A4 were marked and on the side of the defendants, the third defendant examined herself as DW-1 and Ex-B1 to Ex-B7 were marked.

12. On considering the averments stated above, the trial Court had not disputed the relationship between Gopal Naicker, Seeyathammal, Murugesu Naicker, Dhanapackiathammal and Valliammal. It is further observed that though as per Section 14(1) of the Hindu Succession Act, the plaintiff has only a limited interest of Seeyathammal's property, which was developed as an absolute estate and who had made a settlement deed in favour of the plaintiff, by taking into consideration the contention of the defendants 1 and 3, the trial Court had held that Seeyathammal had no right to execute any settlement deed in favour of the plaintiff in view of Section 14(2) of the



Hindu Succession Act and the rights of Seeyathammal was only a life interest and not an absolute interest.

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13.The trial Court had further observed that as per Section 14(1) of the Hindu Succession Act, if there is a pre-existing right of maintenance, the settlement deed executed by Seeyathammal in favour of the plaintiff is valid in the eye of law. However, by referring to Section 14(2) of the Hindu Succession Act, the trial Court had held that the defendants 1 and 2 are concerned, the only interest is vested with Seeyathammal. As contemplated as per Section 14(2) of Hindu Succession Act, the suit schedule property can be dealt with only by the defendants 1 and 2 and Seeyathammal will not confer any right as per Section 14(1) of the Hindu Succession Act. The trial Court had noted that the suit schedule property was only a gift deed, which was not in dispute. However, the husband of Seeyathammal had executed the settlement deed with an exception that he will get back the property at any cost. The settlement deed in favour of Seeyathammal was marked as Ex-A2. The trial Court had extracted the following passage of Ex-A2:

“நான் இரண்டாவதுவிவாகம் செய்துகொண்டபடியால் நீ ஜீவிக்கஅடியில்கண்ட ரூ.200/-மதிப்புள்ளநிலத்தை உன் ஜீவ காலபாரியதும் ஆண்டுஅனுபவித்துக் கொள்ளவும்,உனக்குசந்ததிஉண்டானால் சந்ததியினர் அனுபவித்துக்கொள்ளவேண்டியது. சந்ததி இல்லாவிடில் என் சந்ததியினர் அனுபவித்துக்கொள்ளவேண்டியது.”

14.The Courts below by taking into all the contents in Ex-A2 had held that the



settlement deed referred by the plaintiff is different, as contented by the settlee that the settlement did not vest with the children subsequent to the execution of the settlement deed. Seeyathammal being the first wife of the settlor, namely, Gopal Naicker, challenged the same and this Court had held that the settlee has become the owner of the settled property and the settlement by her is valid in the eyes of law. The said Seeyathammal was blessed with two children, namely, the first and second defendants, who were born in the year 1943 and 1938, which is prior to the amendment of the Hindu Succession Act, 1956. The settlement deed executed by Seeyathammal was marked as Ex-A1 and the contents of Ex-A1 is extracted hereunder:

“ஆகையால் இன்றுமுதல் உனக்குவிவாகமானபிறகுநீயும் எங்களில்
இரண்டாவதுநபரும் உனக்குகணவருமானமுருகேசனும்
ஏகொபித்துகைப்பற்றிசர்வசுதந்திரபாத்தியதையோடும்
தானதிவினயமாய் விக்கிரயங்களுக்குஉரித்தாய் சர்வசுதந்திரமாய்
ஆண்டுஅனுபவித்துக் கொள்ளவேண்டியது.”

15.The trial Court further held that after the execution of the settlement deed in the year 1962, Seeyathammal had sold some properties to third party in the year 1988 along with the respondents 1 to 3. The trial Court had noted that the name of the appellant/plaintiff was not mutated in the revenue records till 1977. It is to be noted that Ex-B4 is a sale deed executed by Seeyathammal along with respondents 1 to 3 and that the appellant/plaintiff has not given any explanation as to the execution of Ex-A1 and Ex-B4 executed by Seeyathammal and the respondents 1 to 3, though an explanation was



given by the appellant/plaintiff that she is an illiterate.

16.The trial Court held that Seeyathammal has got only the life interest and the settlement deed executed by Seeyathammal in favour of the plaintiff is not valid. Accordingly, the trial Court has dismissed the suit and aggrieved by the same, the plaintiff preferred an appeal in A.S.No.90 of 2013 on the file of the Subordinate Court, Poonamallee. The first appellate Court also concurred with the findings rendered by the trial Court and dismissed the appeal filed by the plaintiff by judgment and decree, dated 27.02.2015. Aggrieved over the same, the present Second Appeal has been filed by the plaintiff/appellant.

17.This Court, by order, dated 30.04.2015, while admitting the Second Appeal, had formulated the following substantial questions of law:

“1.Whether the pre-existing right of property though limited, possessed by a female Hindu convert her limited estate into an absolute one as per Section 14(1) of the Hindu Succession Act, 1956?

2.Whether the Appellate Court is right in ignoring the recitals of the settlement deed executed in the year 1933 for maintenance and also prior to the enactment of Hindu Succession Act, 1956?

3.Whether the Appellate Court is right in considering and applying Sub Section 2 of Section 14 of Hindu Succession Act, 1956, when it is a settled principles of law, relied on various judgment that the property possessed by a female Hindu for her maintenance even with restrictions will become the absolute owner of the property, when the property was possessed before the commencement of the Act?”

18.Mr.A.Palaniappan, learned Counsel appearing for the appellant submitted that



the right of maintenance is a pre-existing right and it cannot be construed as a new right conferring on the party. The relationship of the husband and wife would clearly show that the wife is entitled for maintenance from her husband. Once a pre-existing right is sought to be resorted to by the operation of law, the limited right becomes an absolute right and as per Section 14(1) of the Hindu Succession Act, as in this case, the limited right provided under the settlement deed, dated 10.11.1933, which was marked as Ex-A2, is a pre-existing right of maintenance.

19.The next contention raised by the appellant is with regard to the settlement deed, dated 07.03.1962, which is a registered document in Doc.No.7109/1962, which was marked as Ex-A1 executed by Seeyathammal, the mother-in-law in favour of the appellant/plaintiff Balammal, which is valid, as the limited rights of maintenance, which was conferred on Seeyathammal, was already enlarged into an estate in view of Section 14(1) of the Hindu Succession Act.

20.The learned Counsel for the appellant contended that the settlement deed executed by the first respondent/first defendant in favour of the third respondent/third defendant on 10.01.1989, which was a registered document vide Doc.No.3193/1988 in respect of the property comprised in S.No.222/2 to an extent of 0.33 cents is non est in the eye of law.

21.The learned Counsel had emphasized by referring to the settlement deed executed by the first respondent on 07.03.1962 vide Doc.No.710/1962 which was



marked as Ex-A1 and the subsequent document executed in the year 1988 suffers from inherent defect and he contended that the said execution in the year 1988 was registered after a period of 26 years. The learned Counsel for appellant contended that the property in dispute dealt with by Seeyathammal, who had a limited right, had already blossomed into an absolute right, which cannot be taken away by erroneous settlement deed after a period of 26 years by the first respondent in favour of the third respondent.

22.The learned Counsel emphasized with regard to the settlement deed in Ex-A2, irrespective of whether it is a limited estate or not, Ex-A2 clearly states that the property settled in favour of Seeyathammal is only with regard to her maintenance. The testator Gopal Naicker had settled the property in favour of his first wife for maintenance. If the document is construed and understood in strict sense, since the property was settled in favour of Seeyathammal regarding her maintenance, then Section 14(1) of Hindu Succession Act will squarely apply.

23.The learned Counsel for the appellant to substantiate his arguments, had relied upon the following judgments:

(1)The Hon'ble Supreme Court in **(1977) 3 SCC 99**, between ***VeddeboyinaTulasamma and others vs VeddeboyinaSeshaReddi (Dead) By LRs***, had held as follows:

“22.After the attainment of independence, the entire perspective changed, the nature of old human values assumed a new complexion and the need for emancipation of womanhood from feudal bondage became all the more imperative. Under the strain



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and stress of socio-economic conditions and a continuous agitation by the female Hindus for enlargement of their rights a new look to the rights of women as provided by the Shastric Hindu law had to be given. In pursuance of these social pressures it was necessary to set up a new social order where the women should be given a place of honour and equality with the male sex in every other respect. This was the prime need of the hour and the temper of the times dictated the imperative necessity of making revolutionary changes in the Hindu law in order to abolish the invidious distinction in matters of inheritance between a male and a female. Similarly it was realised that there should be express provision for divorce on certain specified grounds inasmuch as the absence of such a provision had perpetrated a serious injustice to the Hindu females for a long time. It seems to me that it was with this object in view that the Legislature of our free country thought it as its primary duty to bring forth legislation to remove the dangerous anomalies appearing in the Hindu law. Even during the British times, there were certain legislations modifying certain provisions of the Hindu law, e.g. the Hindu law of Inheritance Act which added a few more heirs including some females; the Hindu Women's Right to Property Act, 1937, which provided that on partition a widow would be entitled to the same share as the sons in the property of her husband. The Act of 1937, while giving a share to the wife on partition had not disturbed her right to claim maintenance which was preserved intact and although she was not permitted to sue for partition she was undoubtedly entitled to sue for maintenance without having recourse to the remedy of partition. After independence Parliament passed the Hindu Minority and Guardianship Act, 1956, the Hindu Adoptions and Maintenance Act, 1956, the Hindu Marriage Act, 1956, which regulated the law of marriage and divorce and ultimately the Hindu Succession Act, 1956 which provided for intestate succession. The Hindu Succession Act, 1956 was, therefore, undoubtedly a piece of social legislation which fulfilled a long felt need of the nation and was widely acclaimed by the entire people as would appear from the debates which preceded the passing of the Act.

23. It is in the light of these circumstances that we have now to interpret the provisions of Section 14(1) and (2) of the Act of 1956. Section 14 of the 1956 Act runs thus:



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

Explanation.—In this sub-section, ‘property’ includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever; and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instalment or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

*This Court has interpreted the scope and ambit of Section 14(1) and the Explanation thereto on several occasions and has pointed out that the object of the legislation was to make revolutionary and far-reaching changes in the entire structure of the Hindu society. The word “possessed” used in Section 14(1) has also been interpreted by this Court and it has been held that the word has been used in a very wide sense so as to include the state of owning or having the property in one's power and it is not necessary for the application of Section 14(1) that a Hindu woman should be in actual or physical possession of the property. It is sufficient if she has a right to the property and the said property is in her power or domain. In *S.S. Munna Lal v. S.S. Rajkumar* [AIR 1962 SC 1493 : 1962 Supp 3 SCR 418] it was held by this Court that the interest which a widow got by declaration of her share under a preliminary decree would fall within the ambit of Section 14(1) and even though the widow did not get actual possession of the property until a final decree is passed she would in law be deemed to be in possession of the property. In that case, the High Court had held that mere declaration of the share of the widow passed only an inchoate interest to her and she never came to possess the share within the meaning of Section 14 of the Act and, therefore, the property remained joint family property. This Court reversed the judgment of the High Court holding that once a preliminary decree was passed in favour of the widow granting her a share in the property she*



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must be deemed to be in possession of the property in question. Their Lordships emphasise that the words “possessed by” used in Section 14(1) clearly indicated that such a situation was envisaged by the Legislature. While interpreting the provisions of Section 14 the Court also pointed out that the 1956 Act was a codifying enactment which had made far-reaching changes in the structure of the Hindu society and object was to sweep away traditional limitations placed on the rights of the Hindu women. In this connection, the Court observed as follows:

“The Act is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of dispositions which were regarded under the Hindu law as inherent in her estate.... Normally a right declared in an estate by a preliminary decree would be regarded as property, and there is nothing in the context in which Section 14 occurs or in the phraseology used by the Legislature to warrant the view that such a right declared in relation to the estate of a joint family in favour of a Hindu widow is not property within the meaning of Section 14. In the light of the scheme of the Act and its avowed purpose it would be difficult, without doing violence to the language used in the enactment, to assume that a right declared in property in favour of a person under a decree for partition is not a right to property. If under a preliminary decree the right in favour of a Hindu male be regarded as property the right declared in favour of a Hindu female must also be regarded as property.”

Earlier the Court observed in that very case as under:

“By Section 14(1) the Legislature sought to convert the interest of a Hindu female which under the Shastric Hindu law would have been regarded as a limited interest into an absolute interest and by the explanation thereto gave to the expression ‘property’ the widest connotation. The expression includes property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever. By Section 14(1) manifestly it is intended to convert the interest which a Hindu female has in property



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however restricted the nature of that interest under the Shastric Hindu law may be into absolute estate.”

24. The matter was again considered by this Court in *Eramma v. Verrupanna* [AIR 1966 SC 1879 : (1966) 2 SCR 626 : (1967) 1 SCJ 746] where it was held that before a widow can get absolute interest under Section 14(1) she must have some vestige of title i.e. her possession must be under some title or right and not be that of a rank trespasser. In this connection the Court observed as follows:

“The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however, restricted the nature of her interest may be It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property.”

.....

28. In *Badri Pershad v. Kanso Devi* [(1969) 2 SCC 586 : (1970) 2 SCR 95] the preposition died in 1947 leaving behind five sons and a widow. Soon after his death disputes arose between the parties and the matter was referred to an arbitrator in 1950. The arbitrator in his award allotted shares to the parties wherein it was stated that the widow would only have widow's estate in those properties. While the widow was in possession of the properties, the Act of 1956 came into force and the question arose whether or not she became full owner of the property or she only had a restricted interest as provided in the grant, namely, the award. This Court held that although the award had given a restricted estate, but this was only a narration of the state of law as it existed when the award was made. As the widow, however, inherited the property under the Hindu Women's Right to Property Act, her interest became absolute



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with the passing of the Act of 1956 and she squarely fell within the provisions of Section 14(1) of the Act. It was further held that the mere fact that the partition was by means of an award would not bring the matter within Section 14(2) of the Act, because the interest given to the widow was on the basis of a pre-existing right and not a new grant for the first time. This Court observed as follows:

“The word ‘acquired’ in sub-section (1) has also to be given the widest possible meaning. This would be so because of the language of the Explanation which makes sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription, or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement.”

This Court relied upon two earlier decisions viz. S.S. Munnalal case and Sukhram case. This case appears to be nearest to the point which falls for determination in this appeal, though it does not cover the points argued before us directly.

.....

32. After considering various aspects of the matter we are inclined to agree with the contentions raised by Mr Krishna MurthyIyer appearing for the appellants. In the first place, the appellant's contention appears to be more in consonance with the spirit and object of the statute itself. Secondly, we have already pointed out that the claim of a Hindu female for maintenance is undoubtedly a pre-existing right and this has been so held not only by various Courts in India but also by the Judicial Committee of the Privy Council and by this Court. It seems to us, and it has been held and discussed above, that the claim or the right to maintenance possessed by a Hindu female is legally a substitute for a share which she would have got in the property of her husband. This being the position, where a Hindu female who gets a share in her husband's property acquires an absolute interest by virtue of Section 14(1) of the Act, could it be intended by the legislature that



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in the same circumstances a Hindu female who could not get a share but has a right of maintenance would not get an absolute interest? In other words, the position would be that the appellant would suffer because her husband had died prior to the Act of 1937. If the husband of the appellant had died after 1937, there could be no dispute that the appellant would have got an absolute interest, because she was entitled to her share under the provisions of the Hindu Women's Right to Property Act, 1937. Furthermore, it may be necessary to study the language in which the Explanation to Section 14(1) and sub-section (2) of Section 14 are couched. It would be seen that while the Explanation to Section 14(1) clearly and expressly mentions "property acquired by a female Hindu" at a partition or in lieu of maintenance or arrears of maintenance, there is no reference in sub-section (2) at all to this particular mode of acquisition by a Hindu female which clearly indicates that the intention of Parliament was to exclude the application of sub-section (2) to cases where the property has been acquired by a Hindu female either at a partition or in lieu of maintenance etc. The Explanation is an inclusive definition and if Parliament intended that everything that is mentioned in the Explanation should be covered by sub-section (2) it should have expressly so stated in sub-section (2). Again the language of sub-section (2) clearly shows that it would apply only to such transactions which are absolutely independent in nature and which are not in recognition of or in lieu of pre-existing rights. It appears from the Parliamentary Debates that when the Hindu Succession Bill, 1954, was referred to a Joint Committee by the Rajya Sabha, in Section 14(2) which was clause 16(2) of the Draft Bill of the Joint Committee, the words mentioned were only gift or will. Thus the intention of the Parliament was to confine sub-section (2) only to two transactions, namely, a gift or a will, which clearly would not include property received by a Hindu female in lieu of maintenance or at a partition. Subsequently, however, an amendment was proposed by one of the members for adding other categories, namely, an instrument, decree, order or award which was accepted by the Government. This would show that the various terms viz. gift, will, instrument, decree, order or award mentioned in Section 14(2) would have to be read ejusdem generis so as refer to transactions where right is created for the first time in favour of the Hindu female. The intention of Parliament in adding the other categories to sub-section (2) was merely to



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ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in Section 14(2), namely, gift, will, decree, order, award or an instrument which prescribes a restricted estate would not be disturbed and would continue to occupy the field covered by Section 14(2). This would be the position even if a Hindu male was to get the property by any of the modes mentioned in Section 14(2): he would also get only a restricted interest and, therefore, the Parliament thought that there was no warrant for making any distinction between a male or a female in this regard and both were, therefore, sought to be equated.

.....

33. Finally, we cannot overlook the scope and extent of a proviso. There can be no doubt that sub-section (2) of Section 14 is clearly a proviso to Section 14(1) and this has been so held by this Court in *Badri Pershad* case. It is well settled that a provision in the nature of a proviso merely carves out an exception to the main provision and cannot be interpreted in a manner so as to destroy the effect of the main provision or to render the same nugatory. If we accept the argument of the respondents that sub-section (2) of Section 14 would include even a property which has been acquired by a Hindu female at a partition or in lieu of maintenance then a substantial part of the Explanation would be completely set at naught which could never be the intention of the proviso. Thus we are clearly of the opinion that sub-section (2) of Section 14 of the proviso should be interpreted in such a way so as not to substantially erode Section 14(1) or the Explanation thereto. In the present case we feel that the proviso has carved out completely a separate field and before it can apply three conditions must exist:

“(i) that the property must have been acquired by way of gift, will, instrument, decree, order of the Court or by an award;

(ii) that any of these documents executed in favour of a Hindu female must prescribe a restricted estate in such property; and

(iii) that the instrument must create or confer a new right, title or interest on the Hindu female and not merely recognise or give effect to a preexisting right which the female Hindu already possessed.”

Where any of these documents are executed but no restricted estate is prescribed, sub-section (2) will have no application. Similarly where these instruments do not confer any new title for the first time on the female Hindu, Section 14(2) would have no application. It



seems to me that Section 14(2) is a salutary provision which has been incorporated by Parliament for historical reasons in order to maintain the link between the Shastric Hindu law and the Hindu law which was sought to be changed by recent legislation, so that where a female Hindu became possessed of property not in virtue of any pre-existing right but otherwise, and the grantor chose to impose certain conditions on the grantee, the Legislature did not want to interfere with such a transaction by obliterating or setting at naught the conditions imposed.

.....

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

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

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

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



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protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

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

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

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

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they



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include not only limited interest, but also any other kind of limitation that may be placed on the transferee.”

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

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

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

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

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

(2)The Hon'ble Supreme Court in (1979) 3 SCC 300, between **Bai Vajia(Dead)**

by LRs vs ThakorbbhaiChellabhai and others, had held as follows:

“14.A plain reading of sub-section (1) makes it clear that the concerned Hindu female must have limited ownership in property, which limited ownership would get enlarged by the operation of that sub-section. If it was intended to enlarge any sort of a right which could in no sense be described as ownership, the expression “and not as a limited owner” would not have been used at all and becomes redundant, which is against the well-recognised principle of interpretation of statutes that the Legislature does not employ meaningless language. Reference may also be made in this connection to **Eramma v. Verrupanna [AIR 1966 SC 1879 : (1966) 2 SCR 626, 630, 631]** wherein Ramaswami, J., speaking on behalf of himself, Gajendragadkar, C.J., and Hidayatullah, J., interpreted the sub-section thus:

“The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and



indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words 'as full owner thereof and not as a limited owner' as given in the last portion of sub-section (1) of Section 14 clearly suggest that the Legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property."

(3)The Hon'ble Supreme Court in **1998 (II) CTC 253** between **Raghuvir Singh and others vs Gulab Singh and others**, held as follows:

14. According to the old Shastric Hindu law, marriage between two Hindus is a sacrament — a religious ceremony which results in a sacred and a holy union of man and wife by virtue of which the wife becomes a part and parcel of the body of the husband. She is, therefore, called ardhangani. It is on account of this status of a Hindu wife, under the Shastric Hindu law, that a husband was held to be under a personal obligation to maintain his wife and where he dies possessed of properties, then his widow was entitled, as of right, to be maintained out of those properties. The right of a Hindu widow to be maintained out of the properties of her



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deceased husband is, thus, a spiritual and moral right, which flows from the spiritual and temporal relationship of husband and wife, though the right is available only so long as the wife continues to remain chaste and does not remarry.

....

21. Dealing with the scope of Section 14 of the Act, the learned Judge opined that the provisions of the section must be liberally construed in order to advance the object of the Act, which is “to enlarge the limited interest possessed by a Hindu widow” in “consonance with the changing temper of the times” and observed: (SCC p. 121, para 31)

“(3) that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long-felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession;”

....

26. It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applies to instruments, decrees, awards, gifts, etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her “pre-existing right to maintenance” out of that property. As held in *Tulasamma case* [(1977) 3 SCC 99] sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own, without interfering with the operation of Section 14(1) of the Act.”

(4)The Hon'ble Supreme Court in **(2000) 6 SCC 310** between **Balwant Kaur and another vs Chanan Singh and others**, held as follows:

8.The aforesaid relevant recitals in the Will show that Appellant 1 widowed daughter of the testator, was a destitute and was solely dependent upon the testator for maintenance and the



testator himself was also anxious about making provision for her maintenance even after his demise and relied upon his brothers, the other two legatees, for looking after his destitute daughter after his lifetime. It, therefore, becomes clear that Appellant 1 widowed daughter of the testator, was a destitute and had no one else to fall back upon for maintaining herself but for the testator, her father. Under these circumstances, when the testator granted 1/3rd interest in the suit land to Appellant 1 by his Will (as a residue after deducting 2/3rd interest of his brothers), even though he conferred life interest on her to that extent, can it be said that the said provision was in lieu of any pre-existing legal right of maintenance from his estate as available to his destitute widowed daughter? If any pre-existing right is culled out in her favour, at least on the date on which the Will started operating upon the death of the testator, then the appellant's case would squarely be covered by Section 14(1) of the Succession Act but if, on the other hand, it is held that she had no pre-existing right in the testator's estate on the date of coming into operation of the Will, then it could be said that she got for the first time interest in the testator's property under the Will and consequently Section 14(2) would get attracted, as held by the High Court.

9. Now, it must at once be stated that the reasoning of the lower appellate court that the Will in question did not create life interest in favour of Appellant 1 only because in the earlier part of the Will she was described to be the owner of the residue 1/3rd share of property, cannot be sustained. On a conjoint reading of the Will, it has to be held that the testator did not confer full ownership of 1/3rd interest in the suit land on his daughter, Appellant 1 but only conferred a life interest in the property on her. Section 88 of the Indian Succession Act, 1925 provides as follows:

“88. The list of two inconsistent clauses prevails.—Where two clauses of gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.”

This is obviously on the principle that the last clause represents the latest intention of the testator. It is true that in the earlier part of the Will, the testator has stated that his daughter Balwant Kaur shall be the heir, owner and title-holder of his entire remaining moveable and immovable property but in the later part of the same Will he has clearly stated that on the death of Balwant Kaur, the brothers of the testator shall be the heirs of the property. This clearly shows



that the recitals in the later part of the Will would operate and make Appellant 1 only a limited estate-holder in the property bequeathed to her.

10. However, this is not the end of the matter. The moot question which survives for consideration is as to whether, on the date of the operation of the Will, namely, on 11-10-1960, when the testator died, Appellant 1 widowed daughter of the testator; had any pre-existing right in the testator's estate. Now it becomes at once clear that the pre-existing right must be a right in the testator's estate prior to the date on which the Will started operating. It must, therefore, be shown by Appellant 1 that she had any legal right in her father's estate prior to 11-10-1960. So far as this question is concerned, learned Senior Counsel for the appellants tried to answer it by submitting that Appellant 1 widowed daughter of the testator; had a pre-existing legal right to succeed to his estate under Section 8 of the Succession Act, being heir of Class I. The said section provides:

“8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

- (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;
- (b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.”

When we turn to the Schedule, we find that “daughter” is mentioned as Class I heir of the deceased male Hindu dying intestate while his “brothers” are mentioned as Class II heirs in Category II Item (3) of clause II of the Schedule. However, this section could have helped the appellants if it was shown that the deceased Sham Singh had died intestate and not after executing the Will in question. If Sham Singh had died without making a Will of his own properties, then Appellant 1 could have become the full owner of the entire property left by him and would have excluded both his brothers whose interest is claimed by the respondent-plaintiffs. But that situation never occurred on the death of the



testator. Appellant 1 had merely a right to succeed to her father's property if she had survived her father and if her father had died intestate without making any will. This was merely a spessuccessionis, a chance to succeed to her father's property and not any pre-existing legal right. It is, therefore, not possible to agree with the contention of learned counsel for the appellants for invoking Section 14(1) of the Succession Act that, on the date of the operation of the will, Appellant 1 widowed daughter of the testator, had any pre-existing right in the testator's estate at any time prior to 11-10-1960, under Section 8 of the Succession Act.

(5)The Hon'ble Supreme Court in **(2002) 3 SCC 316** between **V.Muthusamy**

(Dead) and others vs Angammal and others, held as follows:

*“17. By the deed Ext. A-4 executed on 13-6-1945 by Alagirisami in favour of his granddaughter Gowrammal and her husband Subramania, a life interest was created over the suit land in favour of Gowrammal and Subramania and in the said deed a provision was made for payment of maintenance to Angammal. In other words, Alagirisami accepted the pre-existing right of maintenance of Angammal given effect to by the deed Ext. A-2 and thereafter the said right preserved by Ext. A-4, Ext. A-5 is the deed of maintenance executed on 21-1-1946 by Subramania, Gowrammal and their minor daughter in favour of Angammal by which she was given a right to enjoy the income from the suit property during her lifetime, and thereafter would revert back to the settlers. Learned Senior Counsel for the defendant has contended that as Subramania and Gowrammal acquired only limited interest under Ext. A-4 and they could not have transferred a better title. This contention is not acceptable as even prior to the date Ext. A-2 was executed, the right of maintenance of Angammal continued and by this deed (Ext. A-5) also her pre-existing right of maintenance was recognised and a charge was also created over the suit land in favour of Angammal. There is a dispute regarding actual physical possession of the suit land by Angammal but it is immaterial as she had legal possession, which would be sufficient in view of the law laid down in **Tulasamma case [(1977) 3 SCC 99]**.”*



(6) The Hon'ble Supreme Court in (2006) 8 SCC 75 between *Sadhu Singh vs*

Gurdwara Sahib Narike and others, had held as follows:

11. On the wording of the section and in the context of these decisions, it is clear that the ratio in V. Tulasamma v. Shesha Reddy [(1977) 3 SCC 99 : (1977) 3 SCR 261] has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a pre-existing right to maintenance in lieu of which she was put in possession of the property. Tulasamma [(1977) 3 SCC 99 : (1977) 3 SCR 261] ratio cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in Raghubar Singh v. Gulab Singh [(1998) 6 SCC 314 : AIR 1998 SC 2401] wherein the testamentary succession was before the Act. The widow had obtained possession under a will. A suit was filed challenging the will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the property on the date of the Act under the will as of right and since the compromise decree created no new or independent right in her, Section 14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right. In Karmi v. Amru [(1972) 4 SCC 86 : AIR 1971 SC 745] the owner of the property executed a will in respect of a self-acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession of the property on the date of the Act, this Court held that the life estate given to her under the will cannot become an absolute estate under the provisions of the Act. This can only be on the premise that the widow had no pre-existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the property as on the date of the coming into force of the Act, the same being bequeathed to her by her father under a will, this Court in Bhura v. Kashi Ram [(1994) 2 SCC 111] after finding on a construction of the will that it only conferred a restricted right in



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the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14(1) of the Act, her right would get enlarged into an absolute estate. This again could only be on the basis that she had no pre-existing right in the property. In **Sharad Subramanyan v. Soumi Mazumdar [(2006) 8 SCC 91 : JT (2006) 11 SC 535]** this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14(1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the will and Section 14(2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in **Tulasamma [(1977) 3 SCC 99 : (1977) 3 SCR 261]**. Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

(7)A learned Single Judge of this Court in **2014 (3) CTC 473** between

Jayalakshmi Ammal vs Kaliaperumal, had held as follows:

“8.1.The contention of the learned Counsel for the Respondent/First Defendant is that there is no substantial question of law involved in this Second Appeal and therefore, the Second Appeal itself is not maintainable. Perusal of records reveals that the only substantial question of law formulated at the time of admission was:



“Whether on the facts and circumstances of the case, the Lower Appellate Court is correct in dismissing the Suit with reference to the Suit Item No. 1, which is the subject matter of settlement under Ex. A-2 under which the property is to revert to the settlor and what is given is only a right of enjoyment to the settlee with no right of alienation?”

8.2. The question framed as such would involve interpretation of the recitals made under Ex. A-2, Settlement Deed. While interpreting the terms of Ex. A-2, the Court may have to invoke the provisions of several enactments like, Hindu Succession Act, Transfer of Property Act, etc. But, no question of law has been framed invoking the applicability or otherwise of Section 14 of the Hindu Succession Act, to the facts of this case. But, just because it is not framed at the time of admission, it does not mean that it cannot be framed at a latter stage.

*8.3. The learned Counsel for the Appellant/2nd Plaintiff relied upon the decision reported in **Renuprova Paul v. Sannyasi Charan Ghosh**, [AIR 2005 Cal. 118](#), to support the proposition that, even if substantial question of law is not framed at the time of admission of Appeal, it can be framed at the time of hearing also.*

*8.4. The learned Counsel for the Appellant also relied upon the decision reported in **Santosh Hazari v. Purushottam Tiwari (Dead) by L.Rs.**, [AIR 2001 SC 965](#), where-under the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis has been pointed out. In the same decision, it has been held that, it would depend upon facts and circumstances of each case to come to a conclusion as to whether a question of law is a substantial one or not. This contention is perfectly right and this Court holds that the issues raised in the Second Appeal are substantial questions of law having regard to the facts and circumstances of this case, which would be evident in the following discussions. Therefore, the contention regarding non-maintainability of Second Appeal is rejected.*

9. Now, the next issue to be considered is, whether Swarnathammal, the first wife of Dharmaraj Pillai/Second Defendant, had absolute interest over the first item of the Suit property, even though only a restrictive interest is alleged to have been conveyed under Ex. A-2,



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Settlement Deed. In other words, what is the legitimate construction to be placed upon the recitals under Ex. A-2.

9.1. It is the contention of the learned Counsel for the Appellant/Second Plaintiff that as per the disposition given in Ex. A-2, Swarnathammal is only entitled to the right of enjoyment of Suit Item No. 1 and after her lifetime, the property has to revert back to the settlor, in case, she had no issues. The recitals in Ex. A-2 and the interpretation to be placed upon the recitals would decide the fate of the Second Appeal.

9.2. The learned Counsel for the Appellant/Second Plaintiff would contend that Section 14(2) of the Hindu Succession Act, would not apply to the facts of this case and the restricted interest said to have been conveyed under Ex. A-2 would not enlarge into absolute estate in terms of Section 14(2) of the Hindu Succession Act. It is further pointed out that there are no pleadings at all with reference to the right to maintenance and therefore, in the absence of pleadings and evidence, the settlee will not have absolute interest.

9.3. Learned Counsel for the Appellant contended that in the absence of pleadings that the limited estate given to the settlee blossomed into an absolute estate, in view of the non-establishment of circumstances under Section 14 of the Act, the Respondents cannot claim absolute interest and in support of the proposition, the following four decisions are relied upon:

*(i) **K. Narasimhan (decd.) v. K. Rajagopal, 2002 (3) LW 720:***

“13.... whether the Courts below are correct in coming to the conclusion that Rukmani Ammal's right has been enlarged under Section 14(1) of the Hindu Succession Act, 1956 and thereby she became absolute owner of the property. Unfortunately, no such plea was raised and no issue was framed to that effect. In spite of that the Courts below have dealt with the same and found that the life interest of Rukmani Ammal had enlarged and thereby she became absolute owner of the property. Such a finding cannot be sustained for want of pleading and evidence.”

(emphasis supplied)

*(ii) **Gulabrao Balwantrao Shinde v. Chhabubai Balwantrao Shinde, 2003 (1) CTC 254: AIR 2003 SC 160:***



“We agree with the plea raised by the Counsel for the Appellants that in the absence of any pleadings to the effect that Balwantrao Shinde had given the properties to Chhabubai by way of maintenance and in the absence of any evidence to that effect, the finding that the properties were given in lieu of maintenance to Chhabubai which right could be enlarged into full ownership right could not be recorded. The High Court was clearly fell in error in recording a finding to the effect that Chhabubai had become absolute owner of the properties left by Balwantrao Shinde. Another factor which persuades us to take this view is that the properties were ancestral hands of Balwantrao Shinde in which Plaintiff No. 1 had a right by birth. The entire property therefore could not have been given to Chhabubai by way of maintenance.”

(iii) *G. Ramav.T.G. Seshagiri Rao (dead) by L.Rs.,(2008) 12 SCC 392:*

“16... No specific issue regarding the nature of the property was framed. There was no issue relating to Section 14(1) of the Act and there was also no evidence led in that regard.”

(iv) *M.P. Lathika v. JayasreeSivanand, AIR 2008 Ker. 112;*

“The properties in question were not gifted in lieu of maintenance or arrears of maintenance. There is no pleading or proof to that effect. Ext. A-1 Gift Deed also does not indicate that it was executed in lieu of maintenance or arrears of maintenance.”

9.4.*The decisions, cited supra, are distinguishable on facts. The object of pleading is to give fair notice to the other side as to the nature of case, the other side has to meet. The facts alleged in this case are admitted facts. The facts pleaded do not require any evidence to prove the same. In fact, the recitals in Ex. A-2-Settlement Deed itself indicate that the Settlement Deed has been executed in lieu of maintenance. It was held in the decisions reported in *V. BapuKalingarayar v. Rajam, AIR 1978 Mad. 192;* and *Chellammal v. Valliammal, AIR 1978 Mad. 21*, that when a plea raised is a new plea, but the point involved is a pure question of law, even though it is not raised in the Written Statement, it could be entertained, when the record is sufficient for decision making. In this case also, even though the question of law now raised is not raised in the Written Statement, it could be entertained as the records are sufficient for decision making.*



9.5. Admittedly, in this case, the first wife and her husband were living together for 26 years. On the date, when she was alleged to have given consent for the second marriage, the property has been settled in her favour. The recitals in the document reads that as desired by the wife, the husband wanted to lend support to her and that is why, property is settled in her favour. Admittedly, within two weeks thereafter, the second marriage had taken place and the husband had executed a Settlement Deed in favour of his second wife also. When the first wife was compelled to part with her partner relinquishing her valuable right to companionship and when there is a proof to show that the husband has chosen to leave the company of his first wife on the ground that there are no children, then naturally the act of the husband would amount to cruelty and therefore, execution of settlement in favour of the first wife is towards her pre-existing right to maintenance. It is specifically stated in the document that the husband executed the settlement only towards providing support to her.

9.6. It is contended by the learned Counsel for the Appellant that the first wife gave consent for the second marriage and therefore, the act of the husband would not amount to cruelty. First of all, the so-called Consent Deed is not available for perusal and interpretation. When the records were called for, it has been replied that records have been already destroyed. When the Second Appeal is pending from the year 1993, it is not known how during the pendency of the Appeal before the higher forum, those documents came to be destroyed. However, the records being destroyed or the records getting themselves destroyed has been the malady in many cases and the Courts are deprived of the opportunity to peruse the document. However, the Trial Court in Paragraph 7 of the Judgment has observed that there was no male issue between the first wife and the deceased Dharmarajpillai and that is why the Consent Letter was executed by the first wife. There is no evidence to show that the infertility was on account of the biological incapacity to procreate on the part of the first wife. It is a myth that the cause of infertility is always believed to be on the part of the women alone, but it is not so. The American Society for Reproductive Medicine (ASRM) lists out the following causes as contributing factors for fertility:

- *Production of healthy sperm by the Man.*



- *Production of healthy eggs by the Woman.*
- *Unblocked fallopian tubes that allow the sperm to reach the egg.*
- *The sperm's ability to fertilize the egg.*
- *The ability of the fertilized egg to become implanted in the uterus.*
- *Adequate embryo quality.*

9.7. It has been pointed out that the fertility requires well-being of both man and woman. The women have to remain helpless because of humiliation from her better-half, her own in-laws and her own relatives. Under such circumstances, the consent said to have been given after 26 years of marital life could not have been a voluntary consent and even if it so, it is an invalid consent.

9.8. Even otherwise, the circumstances under which document has been executed would show that the property has been conferred upon her only towards her pre-existing right towards maintenance. The Second Plaintiff cannot deny knowledge, being the close associate of her husband and she, being his second wife. Therefore, want of pleadings and want of evidence cannot be the defence for the second wife to contend that the plea regarding right to maintenance is a new one. Therefore, those decisions will not apply to the facts of this case. The recitals in the document itself supports the contention of the purchaser, that it was executed towards the right of the first wife towards maintenance. What is stated in Ex. A-2 (a copy of Ex. A-2 has been filed in the typed set of papers) is that

“நீனதுமனைவியானதாலும் எனக்கு உன்மேலுள்ளபிரியத்தாலும் உனதுவிருப்பப்படி உனக்கு ஆதரவுவகைக்கவேண்டுமென்ற எண்ணத்தல் எனக்குபாத்தியமான இதனடியில் ரூ.1000 ஒருஆயிரம் மதிப்புள்ளவீட்டை அந்தசெட்டில்மெண்ட் வாயிலாக உனக்கு கொடுக்கிறேன்.”

9.9. So far as this case is concerned, the available facts themselves are sufficient to come to a conclusion as to whether the properties could have been given in lieu of her right to maintenance or not.

.....

12. Now, it is necessary to look into the object of Section 14. The following are the principles that emerges on the object of Section 14:



1. *that the provisions of Section 14 of the 1956 Act must be liberally construed in order to advance the object of the Act which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times;*
2. *that sub-section (2) of Section 14 does not refer to any transfer which merely recognizes a pre-existing right without creating or conferring a new title on the widow;*
3. *That the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long felt need and tried to do away with the individual distinction between a Hindu male and female in matters of intestate succession;*
4. *that sub-section (2) of Section 14 is merely a proviso to sub-section (1) of Section 14 and has to be interpreted as a Proviso and not in a manner so as to destroy the effect of the main provision."*

(8)A learned Single Judge of this Court in **(2018) 1 CTC 264** between **Meenakshi vs T.Shanmugaprasad**, had held as follows:

18. On seeing the above recital, it could be seen that the settlor had, knowingly, struck off the word “விற்காமல்” in the document. In case the settlor had not mentioned the word “விற்காமல்” and struck off the same in the document, then, one can accept that the settlor might have had an intention to give life interest to Deivayanai Ammal. But when the settlor had written the word “விற்காமல்;” and struck off the said word, it is clear that the intention of the settlor was to give absolute right to the settlee viz., Deivayanai Ammal. By striking off the said word, she had made her mind clear that she is only executing the document absolutely in favour of Deivayanai Ammal. Apart from



this, in other places also the settlor had stated that she is giving absolute right to Deivayanai Ammal. Therefore, I am of the view that under Ex.B1 Settlement Deed dated 17.03.1953, Rukmani Ammal had given absolute right to Deivayanai Ammal in respect of the suit property. In these circumstances, the 1st point for consideration is decided in favour of the respondents/defendants.

19. So far as the application of Hindu Succession Act, 1956 is concerned, the property was settled in favour of Deivayanai Ammal under Ex.B1 Settlement Deed dated 17.03.1953. Under Section 14(1) of the Hindu Succession Act, the female's limited interest would automatically be enlarged into an absolute one by force of Section 14 and the restrictions placed, if any, under the document would have to be ignored. Ex.B1 Settlement Deed was executed prior to the coming into force of the Hindu Succession Act, 1956. After the coming into force of the Hindu Succession Act in the year 1956, the suit property settled in favour of Deivayanai Ammal under Ex.B1 Settlement Deed, even if it is construed as life interest in favour of Deivayanai Ammal would automatically be enlarged into absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored."

24.Mr.M.Manoharan, learned Counsel for the respondents 1 and 3 contended that by taking into Ex-A2, the settlement deed executed by Gopal Naicker in favour of Seeyathammal and by referring to Clause-3 of the settlement deed, dated 13.11.1933, submitted that as Ex-A2 having not only a right of maintenance, but if the said Seeyathammal in the event of having children, then the limited right of maintenance goes, as and when she gave births to the children. According to the learned Counsel for the respondents 1 and 3, once Seeyathammal had given birth to two children, namely,



Murugesu Naicker and Valliammal, first defendant/first respondent, then the limited extent of maintenance goes and in view of the same, the right vested on Seeyathammal got exhausted in view of Section 14(2) of Hindu Succession Act.

25.The learned Counsel further contended that the settlement deed executed by Seeyathammal in favour of the appellant/plaintiff, which was marked as Ex-A1, dated 07.03.1962 is without any force, once Seeyathammal has given birth to children, namely, Murugesu Naicker and Valliammal, who are arrayed as first and second defendants in the suit and the right vested on her goes by itself.

26.The learned Counsel for the respondents 1 and 3 by relying upon Ex-B3, a settlement deed executed by Valliammal, the first defendant in favour of her daughter, Mallika, the third defendant, contended that it is legally enforceable, since Seeyathammal had lost her right, as the moment, when she had given birth to children and the said Seeyathammal had no right to execute any settlement deed, which was marked as Ex-A1. The learned Counsel had relied on Section 48 of the Transfer of Property Act, 1882, which is extracted hereunder:

“48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.”

27.The learned Counsel had referred to Ex-A1, Marriage Settlement deed



executed by Gopal Naicker in favour Seeyathammal. The said document is extracted hereunder:

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“ரூபாய் 300.0.0 முந்நூறு பெருமானநஞ்சைநிலம்

வீவாகசெட்டில்மெண்ட்ரூபத்திரம்

1962 வருஷம் மார்ச் மாதம் 7 ந் தேதிசைதாப்பேட்டைதாலுக்கா 61
நெ. கொரட்டூர் மதூரா அக்ராவரத்தில் மேட்டுத் தெருவில் இருக்கும்
குப்புரெட்டிசுமாரத்திமைனர் சுமார் 14
வயதுடையபாலியம்மாளுக்குசவரசஷனைகர்த்தாவும் கார்டியனும்
பிதாவுமானவை கிராமத்திலிருக்கும் பொன்னப்பரெட்டிசுமாரர் பயிர்
ஜீவணம் குப்புரெட்டிசுவர்களுக்கு.

வை அக்ராவரத்தில் பள்ளத் தெருவில் இருக்கும் கோபால்
நாயக்கர் பாரியால் சியாத்தம்மாள் 1 ஷையாரின் குமாரானபு.முருகேசன்
-2 ஆகநாங்கள் இருவரும் ஏகோபித்துஎழுதிக்கொடுத்தநஞ்சைநிலம்
வீவாகம் செட்டில்மெண்ட்ரூபத்திரம் என்னவென்றால்.

13.11.1933 ல் ஏற்பட்டிருக்கிற 1811 முக 1933 நெம்பர்
செட்டில்மெண்ட்ரூபத்திரப்படிக்குஎங்களுக்குபாத்தியப்பட்டுஎங்கள்
சுவாதீனத்தில் இருந்துவருகிறகீழ்க்கண்டரூ.300.00
பெருமானமுள்ளநிலத்தைபாலியம்மாள் ஆகியஉங்களைஎங்களில்
ஜி.முருகேசனுக்குவீவாகம்
செய்துவைக்கபெண்பார்த்துகொடுக்கும்படிக்கேட்டதற்குவை பெண்ணின்
தாய் தந்தையர் உனக்குஅடியில்
கண்டநிலத்தைவீவாகசெட்டில்மெண்ட்ரூபத்திரம் கொடுத்தால் பெண்
கொடுப்பதாக (வரி 12 ல் டி.அடித்தல் வரி 14 ல் வச அடித்தல் வரி 19 ல் பு
திருத்தல்) சொன்னதற்குநாங்களும் எழுதிக்
கொடுப்பதாகஒப்புக்கொண்டிருப்பதைஅனுசரித்துகீழ்க்கண்டநிலத்தை
இன்றையதேதியில் இந்தபத்திர மூலமாய் பாலியம்மாள்
ஆகியஉனக்குநாங்கள் வீவாகசெட்டில்மெண்ட்ரூபத்திரம் கொடுத்து
இன்றேகீழ்க்கண்டநிலத்தையும் உன்னுடையசுவாதீனம் செய்துவிட்டேன்.

ஆகையால் இன்றுமுதல் உனக்குவீவாகமானபிறகுநீயும்
எங்களில் 2 வதுநபரும் உனக்குகனவருமான ஜி. முருகேசனும்
ஏகோபித்துகைபற்றிசர்வசுதந்திரபாத்தியத்தோடும்,தானாதீவினமயவீ
ற்கிரையங்களுக்குஉரித்தாய் சர்வசுதந்திரமாய் ஆண்டுஅபைவித்துக்
கொள்ளவேண்டியது. உனக்குவீவாகம் ஆகும் வரையில்
உன்பிதாஉனக்குகார்டியன் அதற்குமேல் எங்களின் 2 வதுநபர்
கார்டியனாக இருந்துவரவேண்டியது.
வீவாகமானபிறகுநீக்கேட்டநடத்தையாய் நடந்தால் உனக்கு
இந்தசொத்தின் பேரில் எந்தவிதமானஅதிகாரமும் இல்லை.
இந்தபடிக்குநான்
சம்மதித்துஎழுதிக்கொடுத்தவீவாகசெட்டில்மெண்ட்ரூபத்திரம்.



செட்டியூல்
செங்கற்பட்டு டிஸ்ட்ரிக்ட் ரெசிட்ஸியம் சப்ரிஜிஸ்ட்ரேட்
சைதாப்பேட்டைதாலுக்கா 61 நெம்பர், கொரட்டூரில் நஞ்சைசர்வே 222/2
நெம்பர் ஏக்கர் 0.36 செண்டும், நஞ்சைசர்வே 179 ல்
மேற்கு கிடப்பாநாயக்கர் பாகநிலம்.
தெற்குவாய்க்கால், கிழக்கு பார்வதியம்மாள்
நஞ்சை, வடக்கு ஏழுமலைநாயக்கர் நிலம் மத்தியில் ஏக்கர் 0.39
செண்டுநிலமும் இவைகள் மதிப்பு ரூ. 300.0.0

28.The learned Counsel contended that Ex-A2 clearly shows that the property, which was given in favour of Seeyathammal, is an absolute right conferred on her in view of the marriage, which has taken place between Seeyathammal and Gopal Naicker at the age of 14 and in lieu, a property worth to a sum of Rs.300/- had been given S.No.222/2 to an extent of 36 cents. By referring to Ex-A1, the settlement made by Seeyathammal in favour of Baliasammal, who is her daughter-in-law, the learned Counsel contended that the said property, which was inherited by way of a settlement deed referred in Ex-A2 was settled in favour of Seeyathammal for her maintenance and after Seeyathammal gave birth to her children, thereafter, the said property could be dealt by the legal heirs of the said Seeyathammal.

29.Mr.N.Manohar, learned Counsel relied on the following catena of judgments:

(1)The Hon'ble Supreme Court in **(1986) 4 SCC 760 between Kothi**

Satyanarayana vs GallaSithayya and others, had held as follows:

“5. The Settlement Deed is an instrument contemplated under sub-section (2) and admittedly it created a restricted estate in favour of the widow. Therefore, sub-section (1) of Section 14 would not be attracted. The submission of the appellant's learned counsel that the Settlement Deed brought the properties covered by it in



exchange or in lieu of properties unauthorisedly alienated by Ramamurthy and as the widow had full title in the alienated property, title must be held to have accrued in favour of the widow in the properties covered by the settlement cannot be accepted.”

(2)The Hon'ble Supreme Court in (2022) 4 SCC 274 between **Jogi Ram vs**

Suresh Kumar and others, held as follows:

“33. In the light of the aforesaid passage, Sections 14(1) and 14(2) of the said Act were entered by the Court. The word “possessed” was held to be used in a wide sense not requiring a Hindu woman to be in actual or physical possession of the property and it would suffice if she has a right in the property. The discussion in para 33 thereafter opines that the intention of Parliament was to confine sub-section (2) of Section 14 of the said Act only to two transactions viz. a gift and a will, which clearly would not include property received by a Hindu female in lieu of maintenance or at a partition. The intention of Parliament in adding the other categories to sub-section (2) was merely to ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in Section 14(2) of the said Act. The conclusions were thereafter set forth in para 62 of the judgment as under : (SCC pp. 135-36)

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

(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom.



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If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

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

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

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

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



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

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

34. In our view the relevant aspect of the aforesaid conclusion is Conclusion (4) in para 62 which opines where sub-section (2) of Section 14 of the said Act would apply, and this does inter alia apply to a will which may create independent and new title in favour of females for the first time and is not a recognition of a pre-existing right. In such cases of a restricted estate in favour of a female is legally permissible and Section 14(1) of the said Act will not operate in that sphere.

35. We may add here that the objective of Section 14(1) is to create an absolute interest in case of a limited interest of the wife where such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male who owned self-acquired property is unable to execute a will giving a limited estate to a wife if all other aspects including maintenance are taken care of. If we were to hold so it would imply that if the wife is disinherited under the will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator. That cannot be the objective, in our view.

36. The testator in the present case, Tulsi Ram, had taken all care for the needs of maintenance of his wife by ensuring that the revenue generated from the estate would go to her alone. He, however, wished to give only a limited life interest to her as the second wife with the son inheriting the complete estate after her lifetime. We are, thus, of the view that it would be the provisions of



Section 14(2) of the said Act which would come into play in such a scenario and Ram Devi only had a life interest in her favour. The natural sequitur is that the respondents cannot inherit a better title than what the vendor had and, thus, the view taken by the trial court and the first appellate court is the correct view and the sale deeds in favour of the respondents cannot be sustained.”

(3)The Hon'ble Supreme Court in (2006) 8 SCC 75 between **Sadhu Singh vs**

Gurdwara Sahib Narike and others, had held as follows:

*11. On the wording of the section and in the context of these decisions, it is clear that the ratio in **V. Tulasamma v. Shesha Reddy [(1977) 3 SCC 99 : (1977) 3 SCR 261]** has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a pre-existing right to maintenance in lieu of which she was put in possession of the property. **Tulasamma [(1977) 3 SCC 99 : (1977) 3 SCR 261]** ratio cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in **Raghubar Singh v. Gulab Singh [(1998) 6 SCC 314 : AIR 1998 SC 2401]** wherein the testamentary succession was before the Act. The widow had obtained possession under a will. A suit was filed challenging the will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the property on the date of the Act under the will as of right and since the compromise decree created no new or independent right in her, Section 14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right. In **Karmi v. Amru [(1972) 4 SCC 86 : AIR 1971 SC 745]** the owner of the property executed a will in respect of a self-acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession of the property on the date of the Act, this Court held that the life estate given to her under the will cannot become an absolute estate under*



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the provisions of the Act. This can only be on the premise that the widow had no pre-existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the property as on the date of the coming into force of the Act, the same being bequeathed to her by her father under a will, this Court in **Bhura v. Kashi Ram [(1994) 2 SCC 111]** after finding on a construction of the will that it only conferred a restricted right in the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14(1) of the Act, her right would get enlarged into an absolute estate. This again could only be on the basis that she had no pre-existing right in the property. In **Sharad Subramanyan v. Soumi Mazumdar [(2006) 8 SCC 91 : JT (2006) 11 SC 535]** this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14(1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the will and Section 14(2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in **Tulasamma [(1977) 3 SCC 99 : (1977) 3 SCR 261]**. Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

(4)The Hon'ble Supreme Court in **(2010) 9 SCC 602** between

Gaddam Ramakrishnareddy and others vs Gaddam Rami Reddy and another, had held

as follows:



“23. Despite the elaborate submissions made on behalf of the respective parties, the scope of the special leave petition is confined to the question as to whether the life estate created by Pullareddy in favour of his wife, Sheshamma, by the deed of gift dated 21-12-1952 could be said to be an interest in lieu of maintenance which subsequently became enlarged into a full-fledged right of ownership under Section 14(1) of the Hindu Succession Act, 1956, or whether the same amounted only to a life estate for the purpose of managing the properties and enjoying the fruits thereof till G. Ramireddy, the second son of Pullareddy, who was then a minor, attained majority.

24. The law in this regard has been crystallised in V. Tulasamma case [(1977) 3 SCC 99] and the same has been consistently followed over the years. The ratio of the said decision in simple terms is that if a Hindu woman had any existing interest in a property, howsoever small, prior to the enactment of the Hindu Succession Act, 1956, the same would blossom into a full-fledged right by virtue of the operation of Section 14(1) thereof. On the other hand, if such a right was so acquired for the first time under an instrument, after the Act came into force, the provisions of Section 14(2) of the above Act would be attracted and would not convert such a right into a full-fledged right of ownership of the property.

25. In the instant case, Pullareddy created a life interest in favour of his wife, Sheshamma, in respect of the plaint scheduled property, but also gifted the property in question to Respondent 1 herein, G. Ramireddy, who was then a minor. The principal object of the deed of gift executed by Pullareddy was that the property should ultimately go to G. Ramireddy, Respondent 1 herein. The question which we have to consider in this case is whether in view of the intervention of the Hindu Succession Act in 1956, after the execution of the deed of gift, can it be said that the gift intended in favour of G. Ramireddy stood extinguished by operation of Section 14(1) of the Act?

26. The consistent view which has been taken by this Court since the decision in V. Tulasamma case [(1977) 3 SCC 99] is that the provisions of Section 14(1) of the Hindu Succession Act, 1956 would be attracted if any of the conditions contained in the Explanation stood fulfilled. If, however, a right is created in a Hindu female for the first time in respect of any property under any instrument or under a decree or order of a civil court or under an



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award, where a restricted estate in such property is prescribed, the provisions of sub-section (1) of Section 14 would have no application by virtue of sub-section (2) thereof.”

(5)The Hon'ble Supreme Court in **(2013) 4 SCC 636** between **Shivdev Kaur (Dead) and others Vs. R.S.Grewal**, had held as follows:

“14. Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a “life interest”, through will or gift or any other document referred to in Section 14 of the 1956 Act, the said rights would not stand crystallised into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the provisions of Sections 14(2) and 30 of the 1956 Act would become otiose. Section 14(2) carves out an exception to the rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a will or gift, giving her only a “life interest”, it would remain the same even after commencement of the 1956 Act, and such a Hindu female cannot acquire absolute title.”

(6)The Hon'ble Supreme Court in **(2018) 12 SCC 1** between **Ranvir Dewan vs Rashmi Khanna and another**, had held as follows:

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

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



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

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

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

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

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

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



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

(7)A learned Single Judge of this Court in **S.A.No.455 of 2013, dated 30.01.2024**, between **Anbalagan vs Dakshinamoorthy and others**, had held as follows:

"12. A perusal of this judgment is sufficient to hold that a person, who is the owner of the property, is entitled to dispose of the property in exercise of the power conferred on him under Section 30 of the Hindu Succession Act and while doing so if he grants a limited estate to his wife and absolute estate to his children, the limited estate granted does not bloom into an absolute estate. In the light of the clear and categorical pronouncement of the Supreme Court, the question of law framed in this second appeal has to be answered in favour of the appellant and as against the respondents. I make it clear, Radha Ammal having got the property under Ex.A4, Section 14(2) would apply and she had no right to change the disposition already granted by Kannaiyan, the original owner.



13. I further take notice of the fact that the Courts below have proceeded on the basis that a “WILL” can be proved by admission. Such a proposition of law is unknown to the Indian Succession Act as well as the Indian Evidence Act. Attestation and execution of the unprivileged “WILL” is covered under Chapter III of the Indian Succession Act, 1925 in particular Section 63. The manner of proof of such an unprivileged “WILL” is dealt with by the Indian Evidence Act, 1872 which demands atleast one attesting witness to be examined in order to prove the “WILL”. This is as per Section 68 of the Indian Evidence Act. In the case on hand, the parties to the lis as well as the Courts below have proceeded that since no one has disputed the “WILL”, it is deemed to have been proved. Such a finding and manner of conducting of the litigation is contrary to Section 68. Section 68 of the Evidence Act, 1872 is an exception to Section 58 of the Indian Evidence Act. The parliament when it legislated upon the Indian Evidence Act was well aware that it had inserted Section 58 which stated that admitted facts need not be proved but had still brought into force the requirement of proof of execution of document requiring attestation in a manner known to law as contemplated under Section 68.”

30. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents 1 and 2 and perused the materials evidence available on record.

31. The main issue before the Courts below is whether the property dealt with by Seeyathammal under Ex-A2, dated 10.11.1933, which was subsequently settled by Seeyathammal by settlement deed, dated 07.03.1962, which was marked as Ex-A1, in favour of Balammal, the daughter-in-law of Seeyathammal for her maintenance is an absolute document or not. The Courts below had held that in view of Section 14(2) of Hindu Succession Act, the claim made by the appellant/plaintiff that after the



maintenance, the property to be held by the children of Balammal, cannot be accepted.

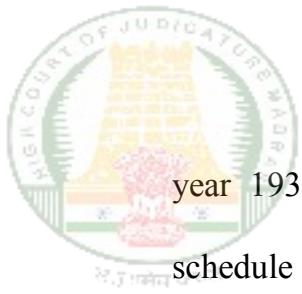
In view of the finding, the Courts below had held that the appellant/plaintiff has no right to enjoy the entire property as per Section 14(1) of Hindu Succession Act. For the sake of convenience, Sections 14(1) and 14(2) of the Hindu Succession Act, are extracted hereunder:

“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.

Explanation.-In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

32.It is clear that as per document, Ex-A2, two survey numbers are reflected as Item No.1 refers to S.No.222/2 consisting of 36 cents and Item No.2 refers to S.No.129/2 consisting of 39 cents. As far as S.No.129/2, there is no dispute in the present suit and the subject matter of the suit is only in so far as S.No.222/2, is concerned. Admittedly, the settlement deed, dated 10.11.1933, which was marked as Ex-A2, was executed in the



year 1933. By this settlement deed, Seeyathammal had absolute right over the suit schedule property and by way of the absolute title in favour of Seeyathammal, the said Seeyathammal had executed the settlement deed in favour of the appellant/plaintiff on 07.03.1962, which was marked Ex-A1.

33. Mr.M.Manohar, learned Counsel for the respondents 1 and 2, contended that there is a cut-off date and once the Hindu Succession Act, 1956, had come into force, the settlement deed executed by Seeyathammal in favour of Baliyammal is hit and therefore, the limited estate cannot be construed to have blossomed to an absolute estate. It is not in dispute that while considering the issue in view of Section 14(1), Ex-A2 would clearly show that the entire property was settled in favour of the appellant/plaintiff for her maintenance. Once the property is conferred in lieu of right of maintenance, then the said limited estate will blossom into an absolute estate of the person in whose favour the marriage settlement had been executed. By referring to the judgment in *Jayalakshmi Ammal's* case (referred supra), the Courts below had taken into consideration that Seeyathammal did not have any right as per Section 14(2) of the Hindu Succession Act and that the said Seeyathammal had no right to execute any settlement deed. A bare reading of the settlement deed executed by Seeyathammal, which was marked as Ex-A1 would clearly show that Seeyathammal had absolute right to execute the settlement deed, as the settlement deed executed by Gopala Naicker in favour of Seeyathammal gives an



absolute right, as contemplated under Section 14(2) of the Hindu Succession Act.

34.Mr.N.Manoharan, learned Counsel contended that there is no right vested with Seeyathammal to settle any property, as there is a second limb of Ex-A2 that if the said Seeyathammal gave birth to the children, then the right of maintenance disappears. Though there seems to be a substantial force of arguments advanced by Mr.N.Manohar, learned Counsel, however, the intent of document executed by Gopala Naicker in favour Seeyathammal clearly shows that the said document, Ex-A2, was executed by Gopal Naicker, Gopal Naicker got married to Dhanapackiathammal, as his second wife. Gopal Naicker was aware that his first wife Seeyathammal should not be left out of any property for rest of her life. Ex-A2 did not make any reference that the said settlement will not lose its relevance once the children was born to Seeyathammal. In the absence of any such ingredients or recitals in Ex-A2, it cannot be construed that Seeyathammal did not have a right to execute a settlement deed or any or other deed in favour of any person. By having an absolute right in favour of Seeyathammal and execution of settlement deed in favour of appellant/plaintiff by way of valid settlement deed, dated 07.03.1962, which was marked as Ex-A2, is valid.

35.In view of above, the substantial of questions of law are answered in favour of the appellant/plaintiff and in view of the same, the judgment and decree passed by the Courts below made in A.S.No.90 of 2013, dated 27.02.2015, on the file of the Subordinate Court, Poonamallee and the judgment and decree, dated 05.11.2013 made in



O.S.No.352 of 2003 on the file of the District Munsif Court, Ambattur, are set aside.

36.In the result, the Second Appeal is allowed. No costs.

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18.12.2024

Internet :Yes

Index :Yes

NCC :Yes

cmr

To

1.The Subordinate Judge, Poonamallee.

2.The District Munsif, Ambattur.

N.SENTHILKUMAR, J.

cmr

Pre-Delivery Judgment made in
S.A.No.331 of 2015



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18.12.2024