



S.A.No.1321 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 23.01.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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1.S.Sambamurthy (Died)

2.Konammal

3.S.Palanisamy

4.S.Raju

5.S.Vijayalakshmi

6.S.Ramesh Kumar

7.S.Saravana Kumar

8.Geetharani

... Appellants

(Appellants 5 to 8 brought on record as LR's of the deceased first appellant vide order of this Court dated 30.11.2021 made in CMP.Nos.13885 to 13887 of 2018)

VS.

1.C.Dhanammal



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2.L.Vishalakshmi @ Vishalakshi

3.R.Jayalakshmi

4.S.Krishnaveni

5.K.Revathi

6.S.N.Kandasamy (Died)

7.S.Balasundaram

8.Kanga

9.Jeya

10.M.Muniammal

11.S.K.N.Vinod

12.S.K.N.Pravin

... Respondents

(R11 & R12 brought on record as legal heirs of R6 vide order of this Court dated 05.01.2024 made in CMP.No.16856 of 2023)

PRAYER: Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree dated 26.04.2013 made in A.S.No.149 of 2007 on the file of the III Additional District & Sessions Court, Coimbatore reversing the Judgment and Decree dated 09.04.2007 made in O.S.No.663 of 2004 on the file of the II Additional Subordinate Court at Coimbatore.



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For Appellant : Mr.S.Mukunth
for Sarvabauman Associates

For respondents
1 to 5 & 11 to 12 : Mr.P.Saravana Sowmiyan

For respondents
7 to 10 : No appearance

Respondent 6 - Died

JUDGMENT

The present second appeal arises out of Judgment and decree of the III Additional District and Sessions Court, Coimbatore in A.S.No.149 of 2007 dated 26.04.2013. By the said judgment and decree, the learned District Judge reversed the judgment and decree of the court of learned II Additional Subordinate Judge, Coimbatore in O.S.No.663 of 2004 dated 09.04.2007 thereby, dismissing the suit for partition.

2. The properties belonged absolutely to one Velusamy Chettiyar.

He had a wife by name Muniyammal and through her, he had four children



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namely

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- (1) S.V.Shanmugam,
- (2) S.V.Jaganathan,
- (3) Chellammal and
- (4) Rajammal.

3. Velusamy Chettiyar executed a Will which is accepted by both sides. This Will has been marked as Ex.A1 in the suit. He divided his self acquired properties into two portions as A schedule and B schedule. A schedule properties were given to his eldest son Shanmugam and B schedule properties were given to his second son Jaganathan. Shanmugam married one Chinnamuthu and from the wedlock, they had five children namely

- (1) Sambamoorthi,
- (2) Konammal,
- (3) Palanisami,
- (4) Raja and



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(5) Balachandran.

4. Jaganathan had married twice viz., his first wife/Rukmani Ammal and second wife/Dhanammal. Through his first wife/Rukmani Ammal, he had one son by name Arunagiri and one daughter by name Dhanammal and through his second wife/Dhanammal, he had four daughters namely

- (1) Visalakshi,
- (2) Jayalakshmi,
- (3) Krishnaveni and
- (4) Revathi.

5. Arunagiri/son of Jaganathan also married twice. His wives are Lakshmi and Umarani. Insofar as the daughters branch is concerned, Chellammal had one daughter by name Muniyammal and Rajammal had two daughters namely Jaya and Kanaga.



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6. Insofar as the A schedule mentioned property which fell to the share of S.V.Shanmugam is concerned, there is no dispute as it is being enjoyed by his sons and daughters. The suit property is the B schedule to Ex.A1. The disposition insofar as the B schedule is concerned under Ex.A1 is as follows:

The relevant portion in Ex.A1	Translated version
“கீழ்க்கண்ட சொத்தை நான் என உயிருள்ளவரை என இஷ்டம் போல் அனுபவித்து வருவேனாகவும், என ஜீவிய திசைக்கு பின்னிட்டு கீழ்காணும் A ஷெட்யூல் சொத்தை என மூத்த மகன் S.V.ஷண்முகத்தி	I will enjoy the property described hereunder as I wish throughout my lifetime and after my lifetime, the rental income from the property morefully described in the Schedule A hereunder, shall be acquired by my grandson namely 1) Sambamurthy 2) Pazhanisamy 3) Raju 4) Balasundaram, sons of my eldest son S.V.Shanmugam without



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குமாரர்களும்

எனக்கு

பேரன்மார்க

□

சாம்பமூர்த்தி (1), பழனிசாமி (2), ராஜீ

(3), பாலசுந்தரம் (4)

இவர்கள்

அடைந்து

சொத்தை

எவ்விதமான

வில்லங்கங்க

ளுக்கோ

பராதீனங்களு

□

உட்படுத்தாம

தின்

வருமானத்தை

மட்டும்

அடைந்து

அனுபவித்து வந்து ஷை 4

பேரன்மார்க

ிய

subjecting the property to any alienation or encumbrance and after the lifetime of all the said grandsons, it shall be acquired with absolute rights by the male heirs of my aforesaid four grandsons.

After my lifetime, the property at Krishnapuram described morefully in the B schedule shall be acquired by grandson, S/o Late. Jaganathan, my younger son, without subjecting it to any encumbrances until his lifetime.

The property thus enjoyed shall be acquired by his male heirs with absolute rights. If my aforesaid grandsons subject the respective properties under their enjoyment, to any encumbrances, it shall not be maintainable. The persons acquiring the A and B schedule



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திசைக்கு			properties shall pay to my wife
பின்னர்			Muniyammal aged about 75 years
அவர்கள்			until her lifetime i.e. The person
அனுபவிக்கும்			acquiring A schedule property shall
சொத்தானது			pay Rs.12.50 per month and the
ஷை	என்		person acquiring B schedule
பேரன்மார்க்			property shall pay Rs.12.50 per
ரின்			month in all Rs.25.00 per month to
ஆண்வாரிசுகளு			the said Muniyammal towards
க்கு	சர்வ		maintenance.
சுதந்திரமாய்			
பரிபூர்ணமாக			Further Dhanammal, second
பாத்தியப்பட			wife of my late second son
வேண்டியது.	என்		Jeganathan aged about 40 years and
ஜீவிய			her daughters shall reside in the
திசைக்கு			south facing terrace portion in the
பின்னர்	கீழ்க்கண்ட	B	property North of the B schedule
ஷெட்யூல்			property, the said Arunagiri Chetty
கிழபுரம்			shall reside in the south facing
சொத்தை	என்		single room on the rear side of the
இளைய	மகன்		house wherein the said Dhanammal
லேட்			resides i.e. on the northern end and



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ஜெகன்னாதா

□

எனக்கு

பேரனுமான

நாளது

கல்யாணமாகாத

அருணகிரி

செட்டி

அடைந்து

சொத்தை

எவ்விதமான

வில்லங்க

பராதீனங்களு

□

உட்படுத்தாம

டய

ஆயுட்காலம்

வரைக்கும்

அனுபவித்துக்

கொள்ள வேண்டியது. ஷை

என்

பேரன்

அருணகிரி

வரை

the tile roofed house on the southern side near the street shall be let out and the said Dhanammal and Arunagiri shall acquire and enjoy equal share in the rent. After Dhanammal's lifetime, my grandson Arunagiri shall acquire the property where she lives and enjoy it without subjecting it to any encumbrances.



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செட்டி
அனுபவிக்கும்
சொத்தானது
ஷையான்
ஆயட்காலத்துக்
கு
ஷையானின்
ஆண்வார்க்குளு
க்கு
பரிபூர்ணமாக
சர்வ
சுதந்திரமாய்
பாத்தியப்பட
வேண்டியது.
கண்ட
பேரன்மார்க
ர்கள்
அனுபவிக்கும்
சொத்தை
ஏதேனும்
வில்லங்க
பராதீனங்கள்

பிறகு

மேலே

என்



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செய்தால்	அது	
செல்லத்தக்கதல்ல.	தவிர	
என் மனைவி சுமார்	75	
வயதுள்ள		
முனியம்மாளுக்கு	A, B	
ஷெட்யூல்		
சொத்தை		
அடைபவர்கள்		
ஷை		
முனியம்மாள்		
ஜீவிய	திசை	
வரைக்கும்	A	
ஷெட்யூல்		
Rs.12.50 ம்	B	
ஷெட்யூல்		
Rs.12.50 மாக		
சேர்த்து		
மாதா மாதம் ரூபாய்	25.00	
வீதம் ஷை		
முனியம்மாளு		
க்கு		
ஜீவனாம்சமாக		



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கொடுத்து	வர
வேண்டியது.	
மேலும்	காலம்
சென்ற	என் 2 வது
குமாரன்	
ஜெகன்னாதனுடைய	2 வது
மனைவி	சுமார் 40
வயதுள்ள	
தனம்மாளும்	ஷையாரின் 4
குமாரத்திகளும்	B
ஷெட்யூல்	
சொத்தின்	வடக்கில்,
தெற்கு	
பார்த்த	
ஒத்தை	
டாப்பில்	
குடியிருந்து	
கொண்டும்	ஷை
தனம்மாள்	
குடியிருக்கு	
ம்	வீட்டுக்கு
பின்புறம்	



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அதாவது

வடகோட்டில்

தெற்கு

பார்த்த

ஒத்தை

டாப்பு

ரூமில்

ஷை

அருணகிரி

செட்டி

குடியிருந்து

கொண்டும்

தென்புறம்

வீதிபுறமுள்ள

ஓட்டுவில்லை

வீட்டை

வாடகைக்கு

விட்டு ஷை தனம்மாளும் ,

அருணகிரியும்

சரிபாதி

வாடகையை

அடைந்து

ஜீவித்து

வர

வேண்டியது.

ஷை



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தனம்மாள்

ஜீவிய

திசைக்கு

பின்னர்

ஷையார்

குடியிருக்கு

ம் வீடு என்

பேரன்

அருணகிரி

அடைந்து

எவ்வித

பராதீனங்கள்

செய்யாமல்

அனுபவித்து

வர வேண்டியது.”

7. As seen from the aforesaid document, the intention of Velusamy

Chettiyar was to give the B schedule property absolutely to his grand-son

through Jaganathan with life estate reserved for Dhanammal (Wife of



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Jaganathan), Visalakshi, Jayalakshmi, Krishnaveni and Revathy.

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8. Before the trial court, it was argued that on the death of Arunagiri as the second wife/Dhanammal was in possession of the property, by virtue of Section 14(1) of the Hindu Succession Act, she became the absolute owner and consequently, the property devolved on her legal heirs namely the defendants 6 to 9. This argument was rejected by the trial court, applying the principles of Section 14(2) of the Hindu Succession Act. The court held that the second wife/Dhanammal and her children got the property only as life estate holders and it does not bloom into absolute estate.

9. Aggrieved over the decree, a regular appeal was preferred before the learned District Judge. The Learned District Judge applied Section 97 of the Hindu Succession Act and held that the property on the death of Arunagiri, would go to his legal heirs namely the defendants 6 to 9 and therefore, allowed the appeal and dismissed the suit. She held that as per the



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Will, the property has been divided and given to two branches of family members. Therefore, the property obtained by one branch gets absolute interest in that property and the other branch has no legal right over the same. Therefore, the property would not revert back to Shanmugham's family and the property of Jaganathan would reach the legal heirs of Jaganathan's family alone. Therefore, the plaintiffs and the first defendant being the children of Shanmugham cannot claim any legal right of share in the partitioned property obtained by Jaganathan and his son Arunagiri.

10. This Second Appeal was presented before this Court against the aforesaid decree.

11. When the matter came up on 02.12.2013, the appeal was admitted on the following substantial questions of law:

“1. Is the learned Appellate Courts correct in misinterpreting the Will thereby granting absolute right



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to a limited right holder?

2. Is the learned Appellate Court right in applying the provisions of Sec.97 of the Indian Succession Act, overlooking the fact that the Will lapses due to the non-existence of the ultimate beneficiary and that the Appellants are entitled for partition by rule of Succession?

3. Is the learned Appellate Court correct in coming to the conclusion that the mother of respondents 1 to 5 takes the suit property absolutely overlooking the intention of the testator who had given her only limited right?"

12. I heard Mr.Mukunth, learned Senior Counsel representing M/s.Sarvabauman Associates for the Appellants and Mr.P.Saravana Sowmiyan, learned counsel for the respondents 1 to 5 and 11 and 12. Respondents 7 to 10 though served, did not enter appearance in the appeal.

13. Since the entire appeal relates to Ex.A1/Will, learned counsels made their submission on all the substantial questions of law put together.



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14. I have gone through the records. In particular, with respect to the questions of law that had been framed by this Court.

15. The narration of the aforesaid facts would go to show that there is no dispute with respect to the A schedule mentioned property allotted to the Shanmugam branch, in and by way of the Will dated 25.06.1969 under Ex.A1. The entire dispute relates to the B schedule mentioned property given to Jaganathan.

16. Mr.Mukunth, learned Senior Counsel would argue that Section 97 of the Indian Succession Act is inapplicable to the facts of the case and further, Section 14(1) of the Hindu Succession Act is also inapplicable, since what was given to Dhanammal/the second wife of Jaganathan and children born to Dhanammal and Jaganathan was only limited estate and therefore, the property would revert back to Velusamy Chettiyar, on the death of



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Arunagiri and he has to be treated as one, who died intestate and all the four children of Velusamy Chettiyar and Muniammal will be entitled to have the share.

17. Mr.P.Saravana Sowmiyan, learned counsel appearing for the contesting respondents would submit that even before the death of Arunagiri, since Dhanammal, the wife of Jaganathan was given life estate, it blooms into absolute estate in her hands and therefore, the property will devolve only on her children namely the defendants 6 to 9. He would further add that the defendants 6 to 9 have alienated their share to the defendant 10/Kandasamy under Ex.A3 on 26.03.2004 and he had put up construction in and over the property. He would plead that the judgment of the learned District Judge does not require any interference and only an order of dismissal should be passed in the appeal.

18. A reading of the Will shows that Velusamy Chettiyar had made the provisions for maintenance for Dhanammal/ wife of Jaganathan. Apart



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from the maintenance, he had also permitted Dhanammal/wife of Jaganathan and the daughters born to Dhanammal and Jaganathan to reside in the property as long as they were alive. The property was to vest absolutely with Arunagiri, his only grandson through Jaganathan. Arunagiri unfortunately passed away on 24.02.1987. If Section 97 of the Indian Succession Act were to apply, the property will go to Arunagiri and his sisters. Therefore, I have to see Section 97 of the Indian Succession Act.

19. Section 97 would apply when bequest is made to a person to describe a class of persons, i.e., as seen from the illustration, if a bequest is made in favour of A and his children, then A would get the whole interest in the property. Illustration 2 makes it clear that if a bequest is made in favour of A and his brothers, A and his brothers will be jointly entitled to the legacy. In this case, Ex.A1 is very specific. The step sisters of Arunagiri were only given life estate and the legacy to Arunagiri was not in the nature of a class,



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but as a specific legacy in favour of an individual. Therefore, in the facts and

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circumstances of this case, Section 97 is inapplicable.

20. It was argued that Section 105 of the Indian Succession Act would apply and that on the death of Arunagiri, the legacy would lapse.

21. A perusal of Section 105 shows that it will apply only when the legatee (Arunagiri) pre-deceased the testator (Velusamy Chettiyar). In this particular case, it is not in dispute that Velusamy Chettiyar died in the year 1969 and Arunagiri died in the year 1987. Therefore, Section 105 is also not applicable. That leaves out Section 14(1) and 14(2) of the Hindu Succession Act.

22. According to Mr.P.Saravana Sowmiyan, since life estate was given to Dhanammal, I have to apply Section 14(1) of the Hindu Succession



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Act and hold that on the death of Arunagiri, since Dhanammal was enjoying the property as a life estate holder, it blooms into absolute estate and on her death, it will devolve on her daughters. I am afraid that I am not in a position to agree with the said submission, because Section 14(1) has a proviso namely 14(2). Section 14(2) reads as follows:

“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.”

23. The Supreme Court in the case of ***Kothi Satyanarayana v. Galla Sithayya, (1986) 4 SCC 760*** has held that Section 14(2) is an exception to Section 14(1). As to when Section 14(2) and 14(1) would apply was the subject matter of consideration of the Supreme Court again in a very recent judgment in ***Jogi Ram v. Suresh Kumar, (2022) 4 SCC 274***. In the



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said case, similar argument was raised before the Supreme Court stating, on the execution of the Will granting life estate by an Hindu in favour of a female, the same blooms into absolute estate. Rejecting the said argument, the Court held as follows:

“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



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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."



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24. The effect of this judgment is that if a Will creates an independent and new title in favour of a female for the first time, so long as the same is not in recognition of the pre-existing right, then Section 14(2) will apply. In the present case, Velusamy Chettiyar did not recognise any pre-existing right for Dhanammal. Dhanammal is the second wife of his second son. The father-in-law is duty bound to maintain his daughter-in-law, out of the ancestral properties, which comes to his hands, but it does not apply to his self- acquisitions.

25. Apart from that, as seen from the facts under Ex.A1, the father-in-law had made provisions for maintenance for the daughter-in-law as well as had given right of residence to his grand-daughters through the second son's second wife. Therefore, a reading of Ex.A1 shows that it is not in recognition of any pre-existing right of maintenance that existed in Dhanammal, for which the property had been given under Ex.A1. If Section



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14(1) does not apply, then automatically Section 14(2) would apply to the facts of the present case. If Section 14(2) applies, what came in the hands of Dhanammal is only the life estate and on her death, if Arunagiri had been alive, the property would have gone to Arunagiri. Since Arunagiri had died before Dhanammal (i.e., Dhanammal died on 01.12.1992 and Arunagiri died on 24.02.1987), the general principles of Hindu Succession Act will govern the properties.

26. If the general principles of Hindu Succession Act applies, then each of the children of Velusamy Chettiyar and Muniammal and their branches will be entitled to $1/4^{\text{th}}$ share. In other words, the plaintiffs will be entitled to $1/4$ share in common, the defendants 6 to 9 will be entitled to $1/4$ share, the fourth defendant will be entitled to $1/4^{\text{th}}$ share and defendants 2 and 3 will be entitled to $1/4^{\text{th}}$ share in common.

27. It is the duty of the court to sit in the armchair of the testator



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and see that, the legacy that he has created, reaches the beneficiaries. It is the duty of the court to implement the Will, when it is found to be genuine as it stands. In this case, Velusamy Chettiyar had granted right of residence to Dhanammal as well as her children namely defendants 6 to 9. The defendants 6 to 9 have alienated the property in favour of one Kandasamy who is none else than the husband of Revathy, the ninth defendant in the suit.

28. I should add here that alienation has been made by D6 to D9 in favour of D10 and D10 had purchased the property being well aware about the bequest made by Velusamy Chettiyar in favour of his wife and sisters under Ex.A1. Therefore, the benefits of Section 51 of the Transfer of Property Act would not be applicable to S.N.Kandasamy, since I cannot treat him as a person who has purchased the property in a bonafide manner being unaware of the defect in title of his vendor namely his wife and her sisters. Hence, the plea of application of Section 51 of the Transfer of Property Act stands rejected.



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29. Having come to the conclusion that Section 14(1) of the Hindu Succession Act is inapplicable to the facts of the case, I am left with no other option than to apply Section 14(2) of the Act. If I apply Section 14(2) of the Act, then automatically the plaintiffs will be entitled to a share. As seen from above, both Section 97 and Section 105 of the Indian Succession Act being applicable, the ground on which the plaintiffs were non-suited by the lower appellate court would have to be set aside.

30. Before, I part with the case, since I upheld the right of the plaintiffs, it is still my duty to deal with the right of S.N.Kandasamy. S.N.Kandasamy has purchased the right of D6 to D9 who are the life estate holders. Therefore, as long as D6 to D9 are alive, the purchase made by Kandasamy is valid. In other words, the sale made under Ex.A3 is co-terminus with the lifetime of D6 to D9. The right of the residence of the four daughters and the purchaser cannot be interfered with as long as they are



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alive.

31. In fine, second appeal is allowed. The suit O.S.No.663 of 2004 shall stand decreed as prayed for and the judgment and decree of the lower appellate court in A.S.No.149 of 2007 dated 26.04.2013 is set aside.

Cost throughout.

32. The learned Trial Judge is directed to follow the verdict of the Supreme Court in *Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689*. It need not wait for an application for final decree from any of the parties. It shall fix a date and issue notice to all the parties in the suit calling upon them to appear before the court for the purpose of appointing an advocate commissioner to suggest the mode of revision, of course, subject to the right of residence of D6 to D9 and through them to D10.



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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1.The III Additional District & Sessions Court, Coimbatore

2.The II Additional Subordinate Court at Coimbatore.



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