



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :27.11.2024

PRONOUNCED ON :17.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.Nos.190 and 192 of 2004

S.A(MD)No.190 of 2004

1.Surya Gandhi(Died) ...Ist Appellant/2nd Responden6/
2nd Respondent

2.Thanga Pushpam

3.Valarmathi

4.Malarmathi

5.Selvakumar

6.Kannan ...Appellants 2 to 6/LRs of the
deceased sole appellant

(Appellants 2 to 6 are brought on record as legal representatives of the deceased sole appellant as per order of this Court made in M.P.No.1 to 3 of 2012 in S.A.No.190 of 2004, dated 20.08.2013)

.VS.

1.M.Chockalingam

2.M.Sundaravel ..Respondents 1 and 2/Appellants/
Plaintiffs

3.A.Muthukumar(died) ..3rd Respondent/3rd Respondent/
3rd Defendant



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4.P.Devi

5.M.Anupriya

6.M.Anudharshini

7.R.Srimathi

:Respondents 4 to 7/LRs of the
deceased 3rd Respondent

(Respondents 4 to 7 are brought on records as legal representatives of the deceased third respondent as per order of this Court made in C.M.P(MD)Nos.9509 and 10126 of 2019 in S.A(MD)No.190 of 2004, dated 28.02.2020)

S.A(MD)No.192 of 2004

1.Chinnaya Nadar(died)

:Ist Respondent/Respondent/Plaintiff

2.A.Saroja

3.R.Kanagabai

4.R.Annalakshmi

5.K.Latha Bai

6.C.Latha

7.C.S.Radha

8.C.S.Padmini

9.C.Sri Selvakumar

....Appellants 2 to 9/LRs of the
deceased sole appellant

(Appellants 2 to 9 are brought on record as legal representatives of the deceased sole appellant as per order of this Court made in M.P.No.1 to 3 of 2012 in S.A.No.192 of 2004)



.VS.

1.M.Chockalingam

2.M.Sundaravel

3.A.Muthukumar(died) : Respondents 1 to 3/Appellants/
Defendants

4.P.Devi

5.M.Anupriya

6.M.Anudharshini

7.R.Srimathi : Respondents 4 to 7/LRs of the
deceased third respondent

(Respondents 4 to 7 are brought on records as legal representatives of the deceased third respondent as per order of this Court made in C.M.P(MD)Nos.9242 and 9243 of 2019 in S.A.No.192 of 2004, dated 8.4.2022)

PRAYER in S.A(MD)Nos.190 and 192 of 2004: Second Appeals filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.Nos.131 and 132 of 2003, dated 15.06.2004, on the file of Ist Additional Sub-Court, Nagercoil reversing the well considered judgments and decrees made in O.S.No.719 of 1995 and O.S.No.614 of 1997, dated 04.09.2003, on the file of Ist Additional District Munsif Court, Nagercoil.

For Appellants
In both appeals

:Mrs.N.Krishnaveni
Senior Counsel
for M/s.P.Thiyagarajan



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For Respondents
1,2 and 4 to 7 in
S.A.No.190 of 2004
and respondents 1,2
4 to 7 in S.A.No.192
of 2004.

:Mr.V.Raghavachari,Sr.Counsel
for M/s.S.Ramesh

COMMON JUDGMENT

These Second Appeals are directed against the common judgment and decrees made in A.S.Nos.131 and 132 of 2003, dated 15.06.2004, on the file of Ist Additional Sub-Court, Nagercoil reversing the well considered judgments and decrees made in O.S.No.719 of 1995 and O.S.No.614 of 1997, dated 04.09.2003, on the file of Ist Additional District Munsif Court, Nagercoil.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.In S.A.No.190 of 2004, the second defendant in O.S.No.719 of 1995, on the file of Additional District Munsif Court, Nagercoil is the appellant and the respondents are the plaintiffs.

4.In S.A.No.192 of 2004, the plaintiff in O.S.No.614 of 1997, on the file of Additional District Munsif Court, Nagercoil is the



appellant and the respondents are the Plaintiffs.

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5.The Plaintiff in O.S.No.719 of 1995 filed the suit with the following prayer:

“to declare that the plaintiffs and the third defendant are the real owners, who are entitled to take possession of the plaint schedule properties on the death of the first defendant being the heirs of Late. Masanamuthu Nadar and to declare that the first defendant is entitled to take only the usufructs from the plaint schedule properties and to maintain her lie till the end of her life without encumbering it in any way and also to declare that the sale deed No.1685 of 1999 executed by the first defendant in favour of the second defendant as null and void and not binding on the plaintiffs and the plaint schedule properties. The defendants filed the Written Statement and contested the suit.”

6.The Plaintiff in O.S.No.614 of 1997 filed by the plaintiff with the following prayer:

“to grant a decree for permanent injunction restraining the defendants from entering into and disturbing the plaintiff’s peaceful



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possession and enjoyment of the plaint schedule property and for a decree entitling the plaintiff to realize the cost of the suit from the defendants. The defendants contested the suit and filed the written statement.”

7.The trial Court dismissed the suit in O.S.No.719 of 1995 and hence, the defendants filed an appeal in A.S.No.131 of 2003, on the file of Ist Additional Sub-Court, Nagercoil which was allowed by the first appellate Court. Hence the second defendant in O.S.No.719 of 1995 filed these two Second Appeals before this Court.

8.The trial Court by its common judgment, dismissed the suit in O.S.No.719 of 1995 and decreed the suit in O.S.No.614 of 1997 on 4.9.2004. Aggrieved by this, the plaintiffs in O.S.No.719 of 1995 and defendants in O.S.No.614 of 1997 filed an appeal in A.S.No.131 of 2003 before the Ist Additional Sub-Court Nagercoil by its judgment, dated 15.06.2004. Aggrieved by this judgment, the second defendant in O.S.No.719 of 1995 and plaintiff in O.S.No.614 of 1997 filed these Second Appeals before this Court.

9.The plaintiffs’ case in O.S.No.719 of 1995 is as follows:



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9(1)The plaint schedule properties are the properties acquired by Late. Chockalingam Nadar, the grand-father of Plaintiffs 1 and 2 and great grand-father of the third respondent and father-in-law of the first defendant.

9(2)After the death of the said Chockalingam Nadar, the plaint schedule properties devolved upon his sons namely, late Masanamuthu Nadar (father of plaintiffs 1 and 2 and grand-father of third defendant) and his brother late.Chidambaranathan Nadar, the husband of the first defendant. The said Chidambaranathan Nadar died issueless on 02.01.1123 ME. Till then, the plaint schedule properties and other properties of their family remained as joint family properties of the said two brothers.

9(3)After the death of late.Chidambaranathan Nadar, the first defendant, at the instance of her father and some of the relatives, had filed a suit in O.S.No.109 of 1123 M.E before the District Court, Nagercoil for partition of the plaint schedule properties and other properties of the joint family, claiming one half share in it, as if she is entitled to the share of her husband. But the suit was dismissed.



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9(4) Thereupon the first defendant preferred an appeal in A.s.No.21 of 1955, before the Honourable High Court of Judicature, Travancore-Cochin State. After the merger of the present Kanyakumari District with the State of Tamil Nadu, the said appeal was transferred to the Honourable High Court of Tamil Nadu at Madras. Just then, at the arbitration of some of the close relatives and well-wishers of the family, the dispute between the first defendant and the father of the plaintiffs 1 and 2 was compromised so as to save them from further troubles. Both the parties have agreed to abide by them and accordingly, it is specifically admitted that the first party late namely, Mr.Masanamuthu Nadar is entitled to and in possession of them to party No.2 and the Party No.2, the first defendant in the suit is authorized to take the usufructs alone from the plaint properties till her life-time.

9(5) Accordingly, the settlement was prepared, reduced into writing and signed by both parties expressing their mutual consent, duly attested by witnesses and got registered on 26.12.1957. The first condition in the settlement deed is that the second party, the first defendant herein should take the usufructs alone from the



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properties scheduled in the settlement and maintain herself with that income till her lifetime, without encumbering the properties in any way. The second condition is that after the lifetime of the second party, the first defendant, the first party late Mr.Masanamuthu Nadar or his heirs can voluntarily take possession of the scheduled properties and enjoy them by remitting the land tax regularly. During the lifetime of the second party, the first defendant should enjoy the plaint schedule property by remitting the land tax yearly and it must be shown to the first party. The third condition is that both parties 1 and 2 should jointly file the compromise petition and dispose of the Appeal A.S.No.21 or 1995, pending before the High Court, Madras and both parties should bear their own costs. The properties scheduled in the settlement was valued at Rupees one thousand(Rs.1000/-) only.

9(6)As per the terms and conditions of the settlement, the second party, the first defendant herein was taking the usufructs from the plaint schedule properties and enjoying them by paying land tax and showing the land tax receipt annually to the first party Late. Masanamuthu Nadar. Now the first party is died and he died on 15.01.1973, leaving behind him his three sons namely(1)



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Chockalingam, the first plaintiff (2)Sundaravel, the second plaintiff and Azhahuvel, the father of the third defendant. But the second son Azhaguvel died on 17.04.1980 leaving behind him his son Muthukumar, the third defendant. But, as he is not in station to sign the plaint, he has been impleaded as third defendant in the case. So, the possession of the plaint schedule properties on the death of the first defendant, the life estate holder.

10.The contention of written statement in O.S.No.719 of 1995 is as follows:

10(1)The plaint schedule properties and other properties are the ancestral properties of Late Chockalingam Nadar, the grand father or the plaintiffs. The Late Chockalingam Nadar had two sons namely, (1) Masanamuthu Nadar (father of the plaintiff) and (2)Chithambaranathan Nadar (husband or the first defendant). During the lifetime of late. Chockalingam Nadar, the plaint schedule properties and other properties were partitioned into two equal shares and given to the two sons and as such, Masanamuthu Nadar and Chithambaranathan Nadar were put into possession of their respective shares. While-so, Chithambaranathan Nadar, the first



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defendant's husband died leaving behind him, his widow, the first defendant herein and a son. Subsequently, the son also died leaving behind him, his mother, the first defendant alone as the sole heir to the properties of late. Chithambaranathan Nadar. As such, the first defendant had been in possession and enjoyment of the plaint schedule properties and other properties allotted to the share of late. Chithambaranathan Nadar. But disputes arose in the matter of enjoyment of plaint schedule properties and other properties or the first defendant. Therefore the first defendant was forced to file a suit in O.S.No.109/1123 M.E before the District Court Nagercoil for declaration of title and injunction basing on the partition already effected between the father and the two sons as stated supra. The suit was dismissed. The first defendant preferred an appeal in A.S.No.21 of 1995 before the High Court of Travancore-Cochin State, subsequently, transferred and renumbered as A.S.No.634 of 1955 before the High Court of Judicature at Madras. During the pendency of the said appeal, the first defendant and late Masanamuthu Nadar arrived at a settlement and thereby the said appeal came to be withdrawn. As per the said settlement dated 26.12.1957, the first defendant was allotted the plaint schedule properties and as such, the first defendant has been in possession



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and enjoyment of the plaint schedule properties in continuation or her earlier right and possession of plaint schedule properties as absolute owner. Patta has been transferred and the first defendant is paying revenue taxes etc. The first defendant is in possession and enjoyment of the plaint schedule properties as absolute owner in lieu or her preexisting right as widow of Late.Chithambaranathan Nadar. As such the conditions, if any, in the agreement are invalid and not binding on the first defendant or on the plaint schedule properties. As per section 14(1) of the Hindu Succession Act, 1956, the defendant is in possession and enjoyment of the properties as full owner thereof even if any condition is imposed in the settlement, dated 26.12.1957. The conditions imposed in the settlement deed cannot be enforced in view of the provisions in Section 14(1) of the Hindu Succession Act, 1954.

10(2).The averments in Para 6 of the plaint are denied. Since the conditions in the settlement deed are illegal and void and not binding on any of the parties or on the plaint schedule properties, Late. Masanamuthu Nadar had no right, title or possession over the plaint schedule properties. As such, the plaint schedule properties



will not devolve upon the heirs of Late Masanamuthu Nadar. The first defendant is the absolute owner in possession, having every right to encumber, alienate or otherwise dispose of the properties. Late.Masanamuthu Nadar or his heirs had or have no right to enter the plaint schedule properties. The terms and conditions imposed in the settlement deed, dated 26.12.1957 have become ineffective by virtue of Section 14(1) of the Hindu Succession Act, 1956. The first defendant as absolute owner has every right to encumber, sell or otherwise dispose of the plaint schedule properties. The terms and conditions imposed in the settlement deed are illegal and void and are in violation of Section 14(1) of the Hindu Succession Act, 1956. As such, the plaintiffs have no right over the plaint schedule properties and they are not entitled to get any injunction against the defendant in respect of the plaint schedule properties.

10(3)The averments contained in Paragraphs 7 and 8 of the plaint is denied. The first defendant has every right to alienate the plaint schedule properties as she is the absolute owner in possession and enjoyment of plaint schedule properties. The first defendant has already filed her written statement and counter in O.S.No.591 of 1995 before the Principal District Munsif Court,



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Nagercoil and the matter is pending disposal. Both the suits O.S.No.591/1995 and O.S.No.719 of 1995 have to be tried jointly so as to avoid conflicting decisions. It is admitted that the first defendant had already sold plaint items 3,3 and 4 to the second defendant under sale deed document No.1685/1989, dated 30.12.1989. The sale deed in favour of the second defendant is valid and binding on the plaintiffs and defendants and plaint schedule properties. Plaint items 2,3 and 4 were sold to the second defendant for valuable consideration and necessity. The first defendant is competent to execute the said sale deed in favour of the second defendant.

` 11.The plaint averments in O.S.No.614 of 1997 is as follows:

11(1)The plaint schedule property originally belonged to one Thangapazham Nadachi, wife of Late.Chithambaranathan Nadar

11(2)the Plaintiff is the brother of the said Thangapazham Nadachi.

11(3)The husband of the said Thangapazham Nadachi was



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one Chithambaranathan Nadar. The said Chithambaranathan Nadar had a brother by name Masanamuthu Nadar. The defendants 1 and 2 are the sons of the said Masanamuthu Nadar. The third defendant is the grand-son of the said Late.Masanamuthu Nadar through his son Late. Azhaguvel.

11(4)The said Thangapazham Nadachi executed a 'Will' on 22.03.1996 bequeathing the plaint schedule property to the plaintiff. The said Thangapazham Nadachi died on 24.08.1997. The said Thangapazham Nadachi was in possession and enjoyment of the plaint schedule property till her death. On the death of the said Thangapazham Nadachi, the plaint schedule property devolved upon the plaintiff as per the 'Will' registered as Document No.12 of 1996 of the Sub-Registrar's Office, Rajakkamangalam at Ganapathipuram. As such, the plaintiff is in possession and enjoyment of the plaint schedule property as absolute owner thereof from the date of death of the said Thangapazham Nadachi.

11(5)The defendants want to lay claim over the plaint schedule property as they are the heirs of Masanamuthu Nadar, who was the brother of Chithambaranathan Nadar. The defendants



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have no right, title, possession or enjoyment over the plaint schedule property. But the defendants under a mistaken conception, made an attempt to make forcible entry into the plaint schedule property and to disturb the plaintiff's peaceful possession and enjoyment of the plaint schedule property from 03.09.1997.

12.The contention of the written statement in O.S.No.614 of 1997 is as follows:

12(1)The plaint schedule property along with properties i.e., 25 cents in S.No.6582, 69 cents in S.No.623 and 33 cents in S.No. 6462 belong to Late. Chockalingam Nadar. He had two sons, Masanamuthu Nadar and Chidmbaranathan Nadar.

12(2)On the death of Chockalingam Nadar, the properties were inherited by the said Masanamuthu Nadar and Chidambaranathan Nadar and on the death of the latter undivided and issueless the properties survived to Masanamuthu Nadar and his children Chockalingam, Sundaravel and Azhaguvel.

12(3)But the said Thangapazham Nadachi filed an suit as



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O.S.No.109/1123 M.E., against Masanamuthu Nadar alleging partition between her husband Chidambaranathan Nadar and his brother Masanamuthu Nadar. It was found in that case that Chidambaranathan Nadar died undivided and being joint family properties they were obtained by Masanamuthu Nadar by survivorship and that the latter was in possession and in that view that suit was dismissed on 8.3.1954.

12(4)Against that decision Thangapazham Nadachi filed an appeal in A.S.No.21 of 1985 before the Travancore-cochin High Court, but it was transferred to Madras High Court. In that juncture, a compromise was arrived that on the interference of relatives and a deed of settlement was executed between Masanamuthu Nadar and Thangapazham Nadachi on 26.12.1957.

12(5)The said settlement provided among other things that Thangapazham Nadachi was to be in possession of the aforesaid 4 properties and that they were to be enjoyed by her for her life without any powers of alienation and that she was given the right to take the usufructs from the said properties for her life period. It also provided that on the death of Thangapazham Nadachi,



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Masanamuthu Nadar or his heirs, as the case may be, are to enter the property and enjoy the same as absolute owner.

12(6)It is significant that the present plaintiff, who is the brother of Thangapazham Nadachi is an attestor to that settlement. Indeed, it was he who acted on behalf of Thangapazham Nadachi in the execution and registration of the said settlement deed.

12(7).Thus it could be seen that Thangapazham Nadachi for the first time got possession and the right to enjoy the aforesaid four properties for lifetime as per the settlement deed, dated 26.12.1957 alone and her rights are governed by that document.

12(8)The 'Will', dated 22.03.1995 relied on by the plaintiff is a piece of forgery. It was not executed by Thangapazham Nadachi who was bedridden at the time of alleged 'Will' and she has no sound and disposing state of mind at that time.

13.On the basis of the above said pleas, set out by the respective parties, the following issues were framed in O.S.No.614 of 1997 by the trial Court for consideration:



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1. Whether the plaintiff is entitled to get the relief of permanent injunction as sought for?

2. Whether the suit is properly valued and necessary Court fees paid?

3. To what other relief, the plaintiff is entitled to?

14. The additional issues framed on 28.09.2001 is as follows:

1. Whether the deceased Thangapazham Nadachi has the right to right a Will, dated 22.03.1986 in favour of the plaintiff?

15. On the basis of the above said pleas, set out by the respective parties, the following issues were framed in O.S.No.719 of 1995 by the trial Court for consideration:

1. Whether the property of Chockalingam Nadar was partitioned in favour of his sons Masanamuthu and Chidambaranathan during his life time?

2. Whether the first defendant has enjoyed the property that



was given to Chidambaranathan after his death as the absolute owner of the said property?

3. Whether the document, dated 26.12.1957 is illegal?

4. Whether the sale deed executed by the first defendant in favour of second defendant is legally sustainable?

5. Whether the plaintiff is entitled to get declaration that the suit properties belongs to plaintiffs and third defendant and they are entitled to enjoy the same?

6. Whether the plaintiff is entitled to get the relief of declaration that sale deed, dated 30.12.1987 is un-sustainable in law?

7. To what other relief the plaintiff is entitled to?

16. Before the trial Court, in support of the Plaintiffs' case, two witness were examined as P.W.1 and P.W.2 and 11 documents were marked as Ex.P1 to Ex.P11. On the side of the defendants, one Chockalingam was examined as R.W.1 and three documents were



marked as Ex.R1 to Ex.R3.

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17. On considering the material on record, the trial Court passed a common judgment and decree on 04.09.2003 and thus finally dismissed O.S.No.719 of 1995 and decreed the suit in O.S.No.614 of 1997. Aggrieved by this judgment and decree, an appeal in A.S.No.131 of 2003 filed by the respective parties. The first appellate Court by its judgment and decree, dated 15.06.2004 allowed the appeal. Aggrieved by this, the above two second appeals are filed.

18. This Court while admitting S.A.No.190 of 2004 framed the following substantial questions of law:

1. Whether the lower appellate Court is right in decreeing the suit of the plaintiff on the basis of Ex.B1 which itself is against Section 14 of the Hindu Succession Act?

2. Whether the lower appellate Court is right in dismissing the suit holding that Section 14(1) of the Hindu Succession Act has no application to Ex.B1, when Ex.B1 itself confirms the pre-existing



right of the vendor?

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3. Is the lower appellate Court is right in applying the principle of estoppel, waiver and election over riding the provision of the Hindu Succession Act?

4. Whether the lower appellant Court is right in holding that the possession is with the plaintiffs, when the possession of the appellant is admitted by the respondents?

5. Whether the lower appellate Court is right reversing the well-founded judgment of the trial Court regarding possession, when the suit itself is one for declaration and for recovery of possession?

6. When the sale deed is dated 30.12.1989 and when the possession of the appellant has been acknowledged by Thangapazham Nadachi does the learned Ist Additional Subordinate Judge is right in holding that the possession is with the plaintiffs?

19. This Court, while admitting S.A.No.192 of 2004, framed the following substantial questions of law:



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1. Whether the lower appellate Court is right in dismissing the suit of the plaintiff on the basis of Ex.B1, which itself is against Section 14(1) of the Hindu Succession Act?

2. Is the lower appellate Court is right in reversing the findings of the trial Court on the basis of the evidence of P.W.2 with regard to the proof of the Will?

3. Whether the lower appellate Court is right in dismissing the suit, holding that Section 14(1) of the Hindu Succession Act has no application to Ex.B1 when Ex.B1 itself confirms the pre-existing right of the testatrix?

4. Whether the lower appellate Court is right in holding that the Will is a fabricated one when the Will is proved as per the Indian Evidence Act?

5. Is the lower appellate Court is right in applying the principle of estoppel, waiver and election overriding the provisions of the Hindu Succession Act?



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20. The learned counsel for the appellant submitted that the first appellate Court had erred in reversing the well considered judgment of the trial Court without proper appreciation of the facts of the case. He would further contend that the learned Judge had failed to consider the settled principle of law under the Hindu Succession Act and further contended that the learned Judge had failed to appreciate the Settlement Deed-ExB1 in its proper perspective and failed to consider the fact that the suit property was allotted to the executor of the Will in lieu of her maintenance and further contended that Hindu Succession Act, 1956-Sections 14(1), 14(2). if a Hindu female acquired or possessed property in recognition of her pre-existing right sub-section (1) of Section 14 gets attracted. Harmonious interpretation is required to be adopted in giving effect to provisions consistent with constitutional provision to remove gender based discrimination.

20(1) Explanation I to Section 14(1) gives wide amplitude to the acquisition of property in the widest terms. It is merely illustrative and not exhaustive. The only condition precedent is whether Hindu female has a pre-existing right under the personal law or any other law to hold the property or the right to property.



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Any instrument, document, device etc under which Hindu female came to possess the property-movable or immovable – in recognition of her pre-existing right, though such instrument, document or device is worded with a restrictive estate, which received the colour of pre-existing restrictive estate possession by a Hindu female, the operation of sub-Section (1) of Section 14 read with Explanation 1, remove the fetters and limited right blossoms into an absolute right.

20(2) It is further contended that if any attempt is made to put restriction upon the property by a Hindu female under an instrument, document or device, though executed after the Act, 1956 had come into force, it must be interpreted in the light of the facts and circumstances in each case and to construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time under the instrument without any vestige of pre-existing right. If the answer is in the positive, subsection(1) of Section 14 gets attracted. Thus construed, both sub-section (1) and (2) of Section 14 will be given their full play without rendering either as otios or aids as means of avoidance.



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20(3) It is further contended that the question emerges whether Thangapazham Nadachi acquires a limited right under Section 14(2) for the first time under the settlement deed. In the light of the facts and circumstances of the case and the legal setting, the properties allotted in recognition of her pre existing right to maintenance, it is not a right acquired for the first time under the settlement, but it is a reflection of the pre-existing right, which was blossom Thangapazha Nadachi into an absolute ownership after 1956 under Section 14(1) of the act. Under these circumstances, it cannot be held that acquired the right to maintenance for the first time under the settlement deed.

20(4) In view of the settled legal position right from Tulsamma case, the right acquired under the settlement deed is in recognition of the pre-existing right to maintenance known under the law and was transformed into an absolute right under Section 14(1) wiped out the restrictive estate and recognize Thangapazha Nadachi as absolute owner of the property. The appellate Court, therefore, was not correct in holding that Thangapazha Nadachi has acquired only a limited estate under the settlement and Section 14(2) attracts to the restrictive covenants contained in the Will limiting her right to



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maintenance for life time and, the right to enjoy the income from the lands and on her demise, the property reverts back to Masanamuthu Nadar and his legal heirs is not correct in law.

20(5) Therefore, under the preexisting law, she is entitled to remain in possession of the whole estate known as widow's estate and after the Act has come into force that widow's estate was blossomed into an absolute estate by operation of Section 14(1) of Hindu Succession Act.

21. In support of his arguments, the learned counsel for the appellant relied on the following decisions:

1. V. Tulasamma .vs. Vaddeboyina Sesha Reddy reported in 1977(3) SCC 99;

2. Punithavalli Ammal .vs. Minor Ramalingam reported in 1970(1) SCC 570

3. Raghubarsingh .vs. Gulab Singh reported in 1998(6) SCC 314.



**4.Jayalakshmi Ammal .vs. Kalaiaperumal reported in
2014(2) LQW 894**

**5.Ragunath Sagu .vs. Bhimsen Naik reported in 1965(o)
AIR(Ori)59.**

22.The learned counsel for the respondents supported the judgment of the first appellate Court and further contended that the property was not given to Thangapazham Nadachi in lieu of maintenance. Thangapazham Nadachi did not have any pre existing right over the plaint schedule properties. She was given only life interest alone. It was given for her enjoyment during her lifetime and to be taken by others after her life-time. Therefore Section 14(2) of the Hindu Succession Act, 1956 will come into play. Since she has no pre existing right in the suit properties and she got suit properties only under the settlement arrived at by the parties and executed Ex.B1, dated 26.12.1957 to Thangapaham Nadachi under ExB1-Compromise Settlement, dated 26.12.1957 entitled for enjoyment during her lifetime. Then it will be taken by the respondent after her lifetime. Therefore Section 14(2) of the Hindu Succession Act is rightly applied by the first appellate Court. There



is no enlargement of life estate into absolute estate. Further, the learned counsel contended that the alleged Will, dated 22.03.1996 bequeathing the plaint schedule property to Chinniah Nadar is not true. She had no right to execute a Will. Will is forged one and Will is not proved. Apart from that, there is no right to execute a Will. Therefore, the first appellate Court has rightly allowed the appeal.

23.To support his arguments, the learned counsel relied on the following decisions:

1.Thippa Soundararajan .vs. Thimma Venkataraman and others reported in (1976 2 Mad LJ 466.

2.Santhanam Kachapalya Gurukkal @ Kachapeswara Gurukkal reported in AIR 1972 Mad 279.

3.Srimathi Unnamalai Ammal and another .vs. Sri Vellaya Pillai @ Kalia Pillai reported in (1971) 1 MLJ 147.

4.Basanti Devi(dad) by legal represenatives and others .vs. Rati Ram and others reported in (2018) 16 Supreme Court Cases 608.



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5.Thatha Gurunadham Chetti .vs. Thatha Navaneethamma(died) and another reported in 1967 Mad 429.

6.Shivdev Kaur(dead) by others and others .vs. R.S.Grewal reported in (2013) 4 Supreme Court Cases 636.

7.Sadhu Singh .vs. Gurdwara Sahib Narike and others reported in (2006) 8 Supreme Court Cases 75.

24.I have considered the matter in the light of the submissions made by either of the parties.

25.On a perusal of the records, the fact reveals that

26.1Plaint schedule property originally belongs to one Chockalingam, Nadar.

2.Chockalingam Nadar has two sons namely, Masanamuthu Nadar and Chidambaranathan Nadar.

3.Masamamuthu Nadar has three sons namely, Chockalingm,Sundaravel and Azhaguvel.

4.Chidambaranathan Nadar has wife namely, Thangapazha



Nadachi and a son.

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5.The plaint schedule properties and some other properties came to the Masanamuthu nadar and Chidambaranathan after the death of the Chockalinga Nadar.

6.There was an oral partition between Chidambaranathan Nadar and Masanamuthu Nadar in 1943.Chidambaranathan Nadar died on 2.1.1948.Thereafter his wife Thangapazha Nadachi , Masanamuthu Nadar all are in possession and enjoyment of their respective properties.

7.Thangapazha Nadachi who is the wife of Chidambaranathan Nadar filed O.s.No.109 of 1123(M.E) for declaring partition (Ex.B2).The above suit dismissed on 8.3.1954. Against filed by the appeal A.s.NO.21 of 1995 inTravancore-Cochin High Court which was transferred to Madras High Court.

8.In the appeal stage, compromised between them Masanamuthu Nadar executed a settlement deed in favour of Thangapazha Nadachi, dated 26.12.1957 and along with the condition(Ex.B1)

9.In view of settlement deed stated that Masanamuthu Nadar gave four schedule property to Thangapazha Nadachi.

10.Condition stated that not to sell the property and this



property is given only for her life enjoyment.

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11.The property will revert back to Masanamuthu Nadar and his legal heir after the death of Thangapazha Nadachi.

12.Thereafter Thangapazha Nadachi executed a Will in favour of her brother Chinniah Nadar, dated 22.3.1996, who is the appellant herein(S.A.No.192 of 2004)

13.Thangapazha Nadachi executed a sale deed in favour of her brother suriyagandhi dated 30.12.1989, who is the appellant herein (S.A.No.190 of 2004)(Ex.B3).

27.Now the point that has to be decided by this Court is as to whether Thangapazha Nadachi, who is the wife of Chidambaranathan Nadar had pre-existing right over the plaint schedule properties and whether life interest was given over the properties by Ex.B1, dated 26.12.1957 for her maintenance?

28.The fact is that Thangapazha Nadachi filed a suit for partition before the District Court, Nagercoil in Civil suit No. 109 of 1123 is admitted. The suit was dismissed and hence, an appeal was filed before the Travancore-Cochin High Court in Appeal No.21 of 1955 and then transferred to the file of Madras High Court. While



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pending case, a compromise settlement under Ex.B1, dated 26.12.1957 was arrived at between the parties, this is also not disputed and admitted by the parties.

29.The learned Senior Counsel for the respondents contended that the compromise arrived at on 26.12.1957 by Ex.B1 was aimed to settle the dispute between the parties and not for granting maintenance to Thangapazha Nadachi. She had sufficient income to maintain herself and no need for providing any maintenance.

30.I have considered these arguments in the light of the written statement filed by Masanamuthu Nadar in Appeal No.109 of 1123 in the partition suit filed by Thangapazha Nadachi before the District Court Nagercoil.

31.In the written statement, the defendant Masanamuthu Nadar clearly stated that Thangapazha Nadachi is entitled only to maintenance when the first defendant (Masanamuthu Nadar) offered the same, the plaintiff's father disagreed and filed the suit. For better appreciation it is reproduced hereunder Para 5:



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'When the plaintiffs husband fell ill, the defendant met all the expenses for treatment and after brother's death, the first defendant never forcibly entered on the properties and harvested the crop as alleged '.Since the plaintiff's husband and son died, she is entitled to only maintenance and when the first defendant offered the same, plaintiff's father disagreed and filed the suit.'

32.Therefore, it reveals that Thangapazham Nadachi was offered maintenance, but she refused to receive the maintenance and filed the suit for partition. In the appeal, they arrived some compromise for the maintenance of her life and properties were given by Ex.B1, dated 26.12.1957.

33.Further, in the plaint in O.S.No.719 of 1995,in para 5, the respondents herein clearly stated that the properties were given to maintain Thangapazham Nadachi with that income till her lifetime and without encumbering the property in any way. For better appreciation, it is reproduced hereunder:

'Accordingly, the settlement was prepared, reduced to writing and signed by both parties



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expressing their mutual consent, duly attested by witnesses and got registered on 26.12.1957. The first condition in the settlement deed is that the second party, the first defendant herein should take the usufructs alone from the properties scheduled in the settlement and maintain herself with that income till her lifetime without encumbering the properties in any way.”

34. Therefore, the above pleadings and the written statement in O.S.No.109 of 1123 reveals the fact that Thangapazham Nadachi was offered maintenance and thus properties have been given to maintain herself with that income till her lifetime. Therefore, no doubt, the properties have been given to Thangapazham Nadachi to maintain herself as maintenance.

35. Under the Shastric Hindu Law, to maintain a Hindu widow out of the properties of her deceased husband received a statutory recognition with the coming into force of the Hindu Women's Rights to Property Act, 1937. The law on the subject was, thereafter, consolidated and codified by the Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946 which came into force on 23.4.1946. The right to maintenance of the



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Hindu Widow, as a preexisting right, was thus, recognized by the two statutes referred to above but it was not created for the first time by any of those statutes. Her right to maintenance existed under the Shastriuc Hindu law long before statutory enactments came into force.

36.The legal position whether the Hindu widows pre-existing right of maintenance whether covered by Section 14(1) and Section 14(2) of the Hindu Succession Act has been settled by the Honourable Apex Court in ***V.Tulasamma .vs.Vaddeboyina Sesha Reddy reported in 1977(3)SCC 99*** and the relevant portion of the judgement reads as follows:

'72.It is, therefore, clear that the compromise by which the properties were allotted to the appellant Tulasamma in lieu of her maintenance were merely in recognition of her right to maintenance which was a pre existing right and, therefore, the case of the appellant would be taken out of the ambit of Section 14(2) and would fall squarely within Section 14(1) read with Explanation thereto. Thus the appellant would acquire an absolute interest when she was in possession of the properties at the time when the 1956 Act came into force and any restrictions placed



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under the compromise would have to be completely ignored.....”.

37.Further the Supreme Court in ***Raghubar singh .vs. Gulab Singh reported in 1998(6) SCC 314*** settled the position that a Hindu widow has a pre existing right of maintenance under the Shastric Hindu Law and it is covered by Section 14(1) of the Hindu Succession Act, 1956.

38.Next I have considered the argument of the learned counsel for the respondent with regard to the Will, dated 22.03.1986(Ex.A1). As observed supra, the exhibitor Thangapazham Nadachi had absolute right over the property, is competent to execute the Will, dated 22.03.1986 Ex.A1. One cannot be too rigid in assessment of evidence regarding the proof of Will and the Courts have to be pragmatic and liberal in this aspect. In this case, the Will has been proved by examining the attesting witnesses to the Will. The trial Court satisfied and come to the fine opinion that the testator had executed a Will in the presence of the attesting witnesses and taken that Will had been executed by Thangapazham Nadachi. The first appellate Court ignoring the



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attesting witnesses' evidence and ignoring the settled principle of law set aside the finding of the trial Court. Therefore it has to be necessarily interfered with.

39..Therefore, in view of the above, it is held that Thangapazham Nadachi had absolute right over the property given to her under Ex.B1-Compromise settlement, dated 26.12.1957 and she had every right to dispose her property.

40. Next, the Will dated 22.03.1986 Ex.A1 was proved by examining an attesting witness and as such, the finding rendered by the first appellate Court is erroneous and there is no valid ground to reject the finding of fact rendered by the trial Court. The first appellate Court, without assigning any valid reasons, reversed the finding of the trial Court, which is un-sustainable in law and the finding in this regard of the first appellate Court is set aside and the finding of the trial Court is restored. Accordingly, the substantial questions of law are answered.

41.In the result, both the Second Appeals are allowed and the judgment and decree of the trial Court is restored. No costs.



17.12.2024

NCS :Yes/No
Index:Yes/No
Internet:Yes/No

vsn

To

- 1.The Ist Additional Sub-Judge,
Nagercoil.
- 2.The Ist Additional District Munsif,
Nagercoil.

Copy to

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM.,J.

vsn

COMMON JUDGMENT MADE IN

S.A(MD)Nos.190 and
192 of 2004



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17.12.2024