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SA No. 812 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-11-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

SA No. 812 of 2010

1. Arumuga Pillai

Appellant(s)

Vs.

1. PONNUSWAMY [died]

2.BALARAMAN(died)
Tiruvannamalai

3.MEENAKSHI
W/O. PONNUSWAMY, 3 TO 6 RES
AT MADURAMPATTU VILLAGE,
TIRUVANNAMALAI TK and DT.

4.KALIYAPERUMAL
S/o. Ponnuswamy

5.BAGAHIAM
D/o. Ponnuswamy

6.UTHRAMBAL
D/O. PONNUSWAMY
[R3 to 6 b/r as LR's of the deceased R1
vide order of court dated 30/06/2022
made in CMP.Nos. 11667, 11668 11669



of 2016 in SA 812 of 2010(CVKJ)

7.S.Raja

residing at Madurampattu Village,
Thiruvannamalai Taluk, Tiruvannamalai
District

8.S.Anbalagan

residing at Madurampattu Village,
Thiruvannamalai Taluk, Tiruvannamalai
District

9.D.Devi

residing at Madurampattu Village,
Thiruvannamalai Taluk, Tiruvannamalai
District

10.BHUVANESWARI

residing at Madurampattu Village,
Thiruvannamalai Taluk, Tiruvannamalai
District

11.SATHYA

residing at Madurampattu Village,
Thiruvannamalai Taluk, Tiruvannamalai
District [. R2 died, RR7 to 11 brought
on record as legal heirs of the deceased
R2 vide Court order dated 04/11/22
made in CMP No 12186 of 2022 in SA
No 812 of 2010 (KRJ)]

Respondent(s)

PRAYER : Second Appeal filed under section 100 of CPC against the judgment
and decree of the District Judge, Tiruvannamalai in A.S.No.4 of 2009 dated



25.08.2009, reversing the judgment and decree of the Principal Sub Judge,
Tiruvannamalai in O.S.No.46 of 2007 dated 16.12.2008.

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Appellant[s] J.Amirtha Sarayoo
 for Mr.J.Srinivasa Mohan

For Respondent(s) M/s.S.Kaithamalai Kumaran For
 RR3 To 5

JUDGMENT

This Second Appeal has been filed challenging the the judgment and decree of the District Judge, Tiruvannamalai in A.S.No.4 of 2009 dated 25.08.2009, reversing the judgment and decree of the Principal Sub Judge, Tiruvannamalai in O.S.No.46 of 2007 dated 16.12.2008.

2. The appellant is the plaintiff in the suit. The suit has been filed seeking preliminary decree for partition of plaintiff's 2/3 share in the suit property. The trial Court decreed the suit and passed a preliminary decree as prayed. The defendants have preferred the first appeal challenging the judgment of the trial Court. The appeal has been allowed and the judgment and decree of the trial Court has been modified by reducing the share from 2/3rd to 1/3rd share. Aggrieved over that, the plaintiff has preferred this second appeal.



3. The short facts pleaded in the plaint are as follows:

The suit property belonged to one Kuppaiya Pilla and he was in possession of the property as an absolute owner. He died intestate leaving his three sons namely Ponnusamy Pillai, Vasudeva Pillai and Manikkam Pillai and subsequent to his death, these three sons have inherited the property and they were in enjoyment of the same. Ponnusamy Pillai died intestate leaving his sons Vadamalai and Harikrishnan and they succeeded his undivided 1/3rd share in the suit property. Hari Krishnan transferred his 1/6th share in the suit property in favour of one Rasappa Udaiyar and he inturn transferred the same in favour of Dhanammal. Vadamalai died intestate leaving his 1/6th share to be inherited by his wife Dhanammal and son Radhakrishnan. So that they became absolute owners of his 1/3rd share. Dhanammal and her son Radhakrishnan transferred their 1/3rd share in favour of the plaintiff under a registered sale deed dated 11.09.1990. The 1/3rd share of Vasudeva Pillai has been inherited by his legal heirs jointly, who are the defendants herein. Manikkam Pillai's 1/3rd share was inherited by his wife Ariyamalai. The said Ariyamalai gifted her 1/3rd share in favour of the plaintiff under a registered gift deed dated 17.10.1973. Thus, the plaintiff had become the owner of 1/3rd share through a registered gift deed

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dated 17.10.1973 obtained from Ariyamalai. Another 1/3rd share through a sale deed dated 11.10.1990 obtained from Dhanammal and Radhakrishnan. As the shares of the plaintiff are undivided, he had filed the suit for partition of his 2/3rd share.

4. The written statement in brief are as follows:

The plaintiff is entitled to 1/3rd share. After the death of Manikkam, his 1/3rd share was inherited by his wife Ariyamalai and her four daughters. Ariyamalai died intestate and she did not execute any gift deed as alleged by the plaintiff. Since the other daughters of Ariyamalai have not been impleaded, the suit is barred for non joinder of parties. Even if there is a gift deed, it could have been only a forged document.

5. On the basis of the above pleading, the trial Court has framed the following issues :

- 1. Whether the settlement deed dated 17.10.1973 is true and valid?*
- 2. Whether the suit is bad for non-joinder of necessary parties?*
- 3. Whether the plaintiff is entitled to get a preliminary decree for partition by dividing the suit properties into 3 equal shares and allot 3 such shares to him?*



4. To what other relief, the plaintiff is entitled?

6. During the course of trial, on the side of the plaintiff, P.W.1 to P.W.3

were examined and Exs.A1 to A5 were marked. On the side of the defendants, the second defendant was examined as D.W.1 and Ex.B1 was marked.

7. After conclusion of the trial, the trial Court had decreed the suit as prayed and passed a preliminary decree for plaintiff's 2/3rd share in the suit property. On the appeal preferred by the defendants, the first appellate Court has allowed the appeal and set aside the judgement of the trial Court and the first appellate Court decreed the suit only in respect of 1/3rd share dismissing the suit in respect of other 1/3rd share claimed by the plaintiff. Hence, the plaintiff has preferred this Second appeal, challenging the judgment of the first appellate Court, which has been admitted on the following substantial questions of law :

"1) Will not the limited right of Hindu Women under Hindu Women Right to property Act, 1937, get enlarged into absolute one under Section 14 of the Hindu Succession Act, 1956?

2) Whether examining the witness to a document is not sufficient to prove the document as required under Section 69 of the Evidence Act?

3) On whom does the burden of proof lie, when the document is governed by the presumption under section 90 of



the Evidence Act.

4) Whether the third party to a document, with no legal interest in the property covered by the document can challenge the validity of the document?

5) When there is a conflict in the measurement between one given in the document and that available on land, will not the boundaries prevail over the measurement?

8. For the sake of convenient discussion in the Second Appeal, the parties are referred as per their rank in the plaint.

9. The learned counsel appearing for the appellant submitted that after the death of one of the branch head Manikam Pillai, his 1/3rd share would be inherited by his wife Ariyamalai along with her daughters. The said Manikkam Pillai died in the year 1943 before the Hindu Succession Act came into force. The defendants are the third parties, who have no interest in respect of Manikam Pillai's 1/3rd share and hence do not have locus standi to question the settlement deed. The other daughter of Ariyamalai has been examined as P.W.2 and she has asserted about the execution of the settlement deed in favour of the plaintiff. The other daughter is the wife of the plaintiff. When the daughters of Ariyamalai did not raise any objection to the execution of the settlement deed in favour of the plaintiff, the defendants, who are third parties, have no right to



question entitlement or enjoyment of the property acquired by the plaintiff through a gift deed executed by his mother-in-law, Ariyamalai. In fact, the first defendant is one of the attestor to the settlement deed and he has not come to the box and examined himself as a witness. The second defendant who has been examined as D.W.1 has admitted the settlement deed executed by Ariyamalai in faovur of the plaintiff.

9.1. Even under the Hindu Women's Property Act, when the mother is the sole heir, the daughters do not acquire any right of inheritance in respect of the father's property; they have only a right of reversion. After the commencement of the Hindu Succession Act, by virtue of Section 14(1), any property acquired by a Hindu woman for her maintenance shall be deemed to be her absolute property, and she holds it as a full owner by way of inheritance. Since, Ariyamalai has got absolute interest in respect of her $1/3^{\text{rd}}$ share, which she had inherited from her husband, she has got right to convey the title in favour of the plaintiff. Hence, the approach of the first appellate Court is not correct and the judgment of the first appellate Court is liable to be set aside.



10. The learned counsel for the respondent submitted that, as the appellant was the plaintiff in the suit, it is his paramount duty to prove that the settlement deed relied upon by him had in fact been executed by his mother-in-law, Ariyamalai. The first appellate court correctly noted that the settlement deed remains not proved. It is further recorded that PW.2, who is one of the daughters of Ariyamalai, could not have the knowledge about the execution of the settlement deed and hence her evidence is not considered. He has further submitted that PW.3, who is the attester of the settlement deed, also could not say about the date on which the settlement had been executed and hence, his evidence is also not reliable. The suit has been filed by the appellant without impleading the daughters of Ariyamalai, who are also the necessary parties to the suit, and hence it is right for the first appellate court to reduce the share of the appellant/plaintiff to 1/3 instead of 2/3. Originally the whole of the suit property belonged to the original ancestor, Kuppiaya Pillai, which is not denied. He had three sons by the names of Ponnusamy, Vasudevar Pillai and Manikampillai. After the demise of Kuppiaya Pillai, the suit property is inherited by his three sons equally, and each of the sons has got 1/3 share. The



plaintiff is the son-in-law of Mannikam Pillai, and the defendants are the legal heirs of the Vasudeva Pillai branch.

DISCUSSION:

11. The above primordial fact about the relationship between the parties is not in dispute between the parties. The claim of the appellant is that he had purchased the share of Ponnusamy Pillai also from his legal heirs on 11.9.1990 through Ex. A1. This has also been admitted by the defendants, and hence there is no necessity to dwell on how the inheritance had occurred through the legal heirs of the Ponnusamy branch and the consequential sale deed executed in favour of the appellant/plaintiff. In fact, the first Appellate Court had modified the decree of the trial courts by confining it only to the extent of his 1/3rd share which the appellant/plaintiff has purchased under Ex. A1 from the legal heirs of the Ponnusamy Pillai branch. Since the respondents/defendants did not file any cross appeal, it can safely be concluded that the defendants have admitted that the above 1/3rd share was purchased by the appellant/plaintiff on 11.9.1990. Now the dispute is with regard to the other 1/3rd share, which is also said to have been settled in favour of the appellant/plaintiff by his mother-in-law after the



death of Manikkapilali. So far as the defendants' 1/3 share which they had inherited from the Vasudevapillai branch also there is no question, and the appellant does not have any dispute. So I feel the discussion can be limited with regard to the 1/3rd share of Manikkam Pillai. Manikkam Pillai died intestate on 6.6.1943, leaving behind his wife and four daughters.

12. The learned counsel for the appellant submitted that prior to the enactment of the Hindu Succession Act 1956, the Hindu daughter's right of inheritance to their father's property was governed by the Hindu Women's Right to Property Act, 1937. According to Sec. 3 of the said Act, if the Hindu male dies intestate, leaving his separate property to his widow or more than one widow, all his widows together shall be entitled to inherit the property as that of the son. Even then such rights of inheritance of the widows would be a restricted one, and it is just a limited interest known as a Hindu woman's estate. So the daughters were not considered as the legal heirs who can inherit their father's share in the event of the existence of the widow at the time of the death of the Hindu male. The daughters are not considered legal heirs who can inherit any property rights until the Hindu Succession Act 1956 came into force. As the



wife of Manikam Pillai, namely Ariyamalai, was alive, and Manikam did not have any son. Ariyamalai has inherited 1/3rd share of her husband. However, she had executed a gift deed in favour of one of her sons-in-law, who is the plaintiff herein, on 17.9.1973 [Ex. A2].

13. The limited rights of Hindu women have been enlarged into her absolute property after the passing of the Act [30 of 1956]. As per Sec. 14 of the 1956 Act, any property possessed by a female Hindu, whether acquired before or after the commencement of that Act, shall be held as its true owner and not just as a limited owner. As per the explanation given in Sec. 14(1), the above property is inclusive of both immovable and movable property acquired by a female Hindu by inheritance or devised or at partition or in lieu of maintenance or arrears of maintenance or gift from any person, etc. For the sake of better clarity, the above provision is extracted from under:

“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



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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. “

14. Though Ariyamalai had a limited estate as per the 1937 Act, her interest in the property would be as that of property given for her maintenance, and hence that would blossom into her absolute property by virtue of Sec. 14(1) of the 1956 Act.

15. On perusal of the judgement of the first appellate court, it appears that the first appellate court has misled itself on the position of law of inheritance and had made a confused discussion about the entitlement of life estate and the



absolute estate of a Hindu female in accordance with the 1937 Act and thereafter under the 1956 Act. The defendants, who are the third parties to the family of Manikam Pillai, cannot have any say as to the right of limited estate of Ariyamalai after the death of her husband. It is not the contention of the respondent/defendant that Ariyamalai has been given with some other property for her maintenance, and hence, her limited estate in respect of the suit property cannot be considered as the maintenance arrangement.

16. In fact, even in the 1937 Act, the Hindu woman is entitled to the relief of partition for claiming the limited estate for her maintenance. As Ariyamalai has not been left with or has been given any other maintenance arrangement, the property in the hands of Ariyamalai inherited from her husband could only be considered for the purpose of her maintenance. Such a limited estate of maintenance would automatically enlarge as her absolute property after the advent of the Hindu Succession Act 1956. As the explanation of the above provision is inclusive of property acquired by a female Hindu by inheritance or in view of maintenance, the 1/3rd right inherited by Ariyamalai from her husband would fall under the property acquired by inheritance and also for



maintenance. So as per Sec. 14 (1), such property in the hands of Ariyamalai, who is the Hindu female, will become her absolute property, and she will become its full owner.

17. It would have been a different case if Manikam Pillai had died after the 1956 Act came into force. In such case the daughters of Manikam Pillai will also become Class I legal heirs of their father's estate along with their mother. There is no dispute about the date of death of Manikam Pillai, which is said to be on 6.6.1943. As succession had opened even prior to the 1956 Act, without any doubt the property inherited by Ariyamalai from her husband would become her absolute property in view of sec. 14 (1) of the Act 1956. So, she is at liberty to deal with the property as its sole owner in whatever manner she liked to do.

18. The appellant, who is the son-in-law of Ariyamalai, has claimed that he has been gifted with the 1/3rd right of the suit property through a settlement deed dated 17.10.1973 through Ex. A2.

19. The contention of the learned counsel for the respondent is that the



daughters of Ariyamalai are also necessary parties to the suit, and the suit itself is barred for non-joinder of necessary parties. Such a contention would hold good only if Manikkam Pillai died after 1956 and in view of the later Act 30 of 1956. As Manikkam Pillai died on 6.6.1943, and in view of Act 30 of 1956, Ariyamalai herself has become the absolute owner of her limited estate. There cannot be any question of impleading the daughters also as parties to the suit. Interestingly, the daughters of Ariyamalai did not make any objection as to the Ex. A2 settlement deed by making a contention that it is not true.

20. In fact, one of the daughters of Ariyamalai has been examined as PW.2 and she has stated in her evidence about the settlement deed executed by her father in favour of the appellant. It is to be taken note that PW.2 is not the wife of the appellant, she is another daughter of Ariyamalai. Hence, the evidence of PW.2 cannot be rejected as the evidence from an interested witness. One of the witnesses who has attested the settlement deed has also been examined as PW.3 and his evidence also asserts the fact that the settlement deed has been executed by the said Ariyamalai and he has attested the same.

21. In fact, the appellant has got the liberty to prove the transaction of the



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settlement deed just by producing the settlement deed in accordance with Sec. 91 of the Evidence Act. Only when the interested parties raises a claim that the settlement deed is not true or invalid, then the appellant have the burden of proving the entitlement of his settlor and the consequential validity of the document. Strangely the objection is taken out by the other branch to which the defendants have claimed the 1/3rd right is that the defendants' branch cannot raise any such objection to Ex. A2, as they are in no way connected to the branch of Manikkam Pillai. The probability or the improbability of the settlement deed Ex. A1 executed by Ariyamalai in favour of the appellant cannot be presumed by the defendants, who are completely third parties to the affairs of the family members of the Manikkam Pillai branch. Only if Ariyamalai died intestate will the question of inheritance of the female daughters come into play in view of the 1956 Act.

22. The first appellate court relied upon the judgments of the Hon'ble Supreme Court reported in *A.I.R. 1970 S.C. 789 (Srimagal and Co. vs. Books (India) Private Ltd. and others)*, *A.I.R. 1973 Madras 335*, and *2001 (1) L.W. 557 (Sindarathammal and others vs. Rathinathammal and others)* to conclude



that the daughters are also interested parties. However, in all those decisions, the female Hindu had died intestate after the 1956 Act came into force.

23. In the instant case, Ariyamalai had died after 1956: she had executed a settlement deed in favour of the appellant who is the son-in-law of Ariyamalai and hence no parity can be made in the instant case. There can be any challenge made to the alienation made by the Hindu widow prior to her limited estate, which blossomed into her absolute interest after the 1956 Act. After Ariyamalai became the absolute owner by virtue of the operation of Act 30 of 1956, the succession to the property can be said to have opened only upon her death, and not on the death of her husband. Even before her death, she had settled the property in favour of the appellant/plaintiff, and hence nothing remains to be inherited through intestate succession.

24. So it is a baseless claim of the respondent/defendants that the daughters are necessary parties to the suit and that the Ariyamalai could not have executed a settlement deed in favour of the appellant/plaintiff. Similar views have been expressed by the Hon'ble Supreme Court in *Sukhram & Another Vs. Fauri Shankar & Another*, reported in *1968 AIR 365*. The



relevant paragraph of the above judgement is extracted as above:

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“It is true that under the Benares school of the Mitakshara a coparcener may not, without the consent of the other coparceners, sell his undivided share in the family estate for his own benefit: Madho Parshad v. Mehrban Singh(1); Balgobind Das v. Narain Lal and Ors. (2) and Chandradeo. Singh & Ors. v. Mata Prasad & Anr. (3) But the words of s. 14 of the Hindu Succession Act are express and explicit; thereby a female Hindu possessed of property whether acquired before or after the commencement of the Act holds it as full owner and not as a limited owner. The interest to which Kishan Devi became entitled on the death of her husband under S. 3(2) of the Hindu Women's Right to Property Act, 1937, in the property of the joint family is indisputably her "property" within the meaning of S. 14 of Act 30 of 1956, and when she became "full owner" of that property she acquired a right unlimited in point of user and duration and uninhibited in point of disposition. We are unable to agree with Mr. Chatterjee that restrictions on the right of the male members of a Hindu joint family form the bed-rock on which the law relating to joint family property under the Hindu Law is founded. Under the Law of the Mitakshara as administered in the territory governed by the Maharashtra and the Madras Schools and even in the State of Madhya Pradesh, a Hindu coparcener is competent to alienate for value his undivided interest in the entire joint family property or any specific property without the assent of his coparceners. A male member of a Hindu family governed by the Benaras School of Hindu Law is undoubtedly subject to restrictions



qua alienation of his interest in the joint family property but a widow acquiring an interest in that property by virtue of the [Hindu Succession Act](#) is not subject to any such restrictions. That is however not a ground for importing limitations which the Parliament has not chosen to impose.”

25. So the very object of the Act of 1956 itself is to remove the limitations placed on the Hindu female property rights, and hence there cannot be any contradictory view in understanding the possession and object of the property. As the first appellate court has misled itself both on the aspects of proof of the Ex.A2 settlement deed and on the right of Ariyamalai to execute the settlement deed in favour of the plaintiff by virtue of her absolute right, the judgement of the first appellate court is liable to be set aside.

26. So in view of the above discussion, the Substantial Questions of Law raised as to the Hindu woman's entitlement of enlargement of the limited estate inherited by her, is answered that her limited right inherited under the 1937 Act will no doubt get enlarged into an absolute one under Sec.14 of the Hindu Succession Act 1956.



27. With regard to the second Substantial Question of Law is hold that it is sufficient to prove the Ex.A2 settlement deed by examining one of the attestors in a manner found under Sec. 67 of the Evidence Act. When the plaintiff has got the benefit of initial presumption in his favour in respect of her written instrument, like Ex. A2, the burden to prove the contradictory would be on the party which refuses the same. So in the instant case, the respondents, who are in no way connected to Ex.A2, have just stated that Ex.A2 could not be a valid document, but they have not substantiated the same. Thus, the **Substantial Questions of Law are answered.**

26. No doubt the defendants who are the legal heirs of the other branch have got nothing to do with the Mannikampillai's 1/3rd right, and only in view of that they did not raise any claim in respect of Mannikam Pillai's 1/3rd share. In such a case, they cannot challenge the validity of Ex.A2 on their own presumptions and assumptions, and that too when the legal heirs of Mannikampillai themselves did not raise any objection to Ex.A2. The defendants are not the interested parties to raise any contentions as to the validity of the Ex. A2 document, which is an affair between the family members



of Manikkampillai.

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In the result, the second appeal is **allowed**. The judgement of the first appellate court is set aside, and the judgement of the trial court is restored. No costs. Hence, the suit is decreed in respect of the 2/3rd share of the plaintiff, and a preliminary decree is passed in respect of the same. No costs.

13-11-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

vrc/jrs

To

1. The District Judge,
Thiruvannamalai.

2. The Principal Sub Judge,
Thiruvannamalai.

3. The Section Officer
VR Section, High Court, Madras.



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SA No. 812 of 2010



Dr.R.N.MANJULA, J.

VRC/jrs

SA No. 812 of 2010

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