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S.A.No. 1619 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>29.01.2025</i>
<i>Pronounced on</i>	<i>16.04.2025</i>

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULAS.A. No.1619 of 2011

1. Bala Vadivambal
D/o. A.Vaiyapuri
27/14 Thyagabrahmam Street,
Subramanya Nagar,
Salem – 636 005.

2. V.Sakthi Mohan
St. Antony's Hospital,
Thabalpetti, Madhavaram,
Chennai.

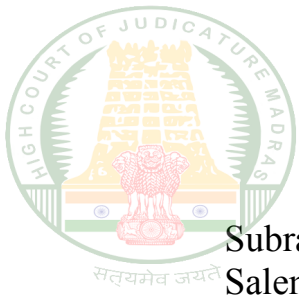
(Rep. by Power Agent Muthuraman,
S/o. Balakrishnan,
27/14 Thyagabrahmam Street,
Subramanya Nagar,
Salem – 636 005.)

... Appellants / Plaintiffs

Vs.

1. Meera
W/o. Radhakrishnan
27/14 Thyagabrahmam Street,
Subramanya Nagar,
Salem – 636 005.

2. Radhakrishnan
S/o. Rangasami
Upstairs Portion,
27/14 Thyagabrahmam Street,



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Subramanya Nagar,
Salem – 636 005.

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3. Satish Kumar
S/o. Radhakrishnan
Upstairs Portion
27/14 Thyagabrahmam Street,
Subramanya Nagar,
Salem – 636 005.

4. Gayatri
D/o. Radhakrishnan
Upstairs Portion,
27/14 Thyagabrahmam Street,
Subramanya Nagar,
Salem – 636 005.

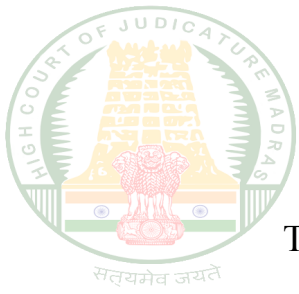
... Respondents / Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against judgment and decree of the learned Additional District Judge (F.T.C. 1), Salem dated 14.09.2011 in A.S.No.18/2011 confirming the judgment and decree of the learned Second Additional Subordinate Judge (F.T.C.1), Salem dated 01.10.2010 in O.S.No.266/2005.

For Appellants : Mr.T.M.Hariharan

For Respondents : Mr.M.Sriram
for Mr.P.Sathish

JUDGMENT



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The plaintiff is the appellant. The suit is filed for recovery of possession and permanent injunction restraining the plaintiff from alienating the suit property. The said suit has been dismissed by the trial Court and the first appeal filed by the plaintiff also got dismissed by confirming the judgment of the trial Court. Now the plaintiffs have preferred the present Second Appeal.

2. The facts averred in the plaint filed by the plaintiff in short :

The first plaintiff is the sister of the second plaintiff. The suit property originally belonged to one Vaiyapuri who is the father of the plaintiffs and the first defendant, as his self-acquired property and he had bequeathed the same in favour of his wife Shanmugasundarambal through a Will dated 03.02.1978. Shanmugasundarambal was given with the absolute interest over the suit property. The plaintiff's father died and thereafter the Will came into effect. The plaintiff's mother Shanmugasundarambal became entitled to the suit property and she sold certain other properties to the plaintiffs and another daughter Jothi in the year 1988. She executed a registered Will dated 18.08.2000 and bequeathed the suit property to both the plaintiffs absolutely. Shanmugasundarambal died on 23.09.2002 and thereafter the Will came into effect and the plaintiffs became entitled to the suit property and they have taken possession of it and are in enjoyment of the



same. The first defendant is another sister of the plaintiffs, and the second defendant is the husband of first defendant and defendants 3 and 4 are their children. In the year 2003, when Shanmugasundarambal was ill, the defendants came to the suit property to visit her and occupied the first floor of the suit property. Despite repeated demands made by the plaintiffs, the defendants failed to vacate the premises. They also attempted to encumber the property in favour of third parties. Consequently, the plaintiffs have filed this suit.

3. The averments made in written statement of the D1 to D3 in short:

Shanmugasundarambal, during her life time, had filed a suit in O.S.No.404/2000 against the defendants 1 to 3 in respect of the suit property, seeking the relief of permanent injunction. As she died during the pendency of the suit, the plaintiffs and their sister Jothi were impleaded as legal heirs of Shanmugasundarambal and subsequently the suit was dismissed as not pressed. The present suit has been filed by the same plaintiffs against the same defendants in respect of the same property and hence it is not maintainable.

3.1 Vaiyapuri left a Will dated 03.02.1978 by which the first defendant



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was granted absolute interest over the “C” schedule properties.

Shanmugasundarambal was only given with a life estate and the first plaintiff was granted with a right of residence in a portion of the house along with the first defendant. The second plaintiff, having acted against the wishes of his father, was not allotted with any property under the Will. Upon the demise of Vaiyapuri, the Will came into effect. The first defendant continued to maintain her mother and reside in the same house along with her husband. Subsequently, Shanmugasundarambal became mentally unsound and was incapable of making decisions. During such time, the plaintiffs and Jothi, for their own benefit, obtained certain documents from her when she was not in a sound and disposing state of mind. Consequent sale deed and the alleged Will dated 18.08.2000 executed by Shanmugasundarambal are not valid in law and hence they should be treated as *non-est*. The plaintiff with the support of power agent obtained the signature of Shanmugasundarambal in various papers and filed a suit in O.S.No.404 of 2000. The plaintiffs and Jothi are now trying to sell the entire property. The defendants however are not trespassers and are in possession of the suit property in their own right. Therefore, the present suit is liable to be dismissed.

4. The averments made in written statement of the fourth defendant in short:



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Under the Will executed by Vaiyapuri, the first plaintiff was

allotted with the properties described under the “B” Schedule. “A” Schedule was given to Jothi and C schedule was absolutely bequeathed to the first defendant. Since the first plaintiff was deserted by her husband, she was given with a right to reside in a portion of the house along with the first defendant. Shanmugasundarambal was given with the life interest in C Schedule property while the “D” Schedule property was given absolutely to Shanmugasundarambal. Vaiyapuri did not give any property to his son, the second plaintiff as he was acting against his interest.

4.1 The Will dated 18.08.2000 executed by Shanmugasundarambal in favour of the plaintiffs in respect of 'C' schedule properties is not valid in law. Hence the plaintiffs can derive no right through the said Will. The first defendant has been residing in the suit property since birth, whereas the first plaintiff is living in a portion of house as per the terms of Will dated 03.02.1978. She has no other interest or entitlement in the property. The present suit has been instituted with a malicious intent to disturb the lawful possession and enjoyment of the first defendant, and hence, it is liable to be dismissed.

5. During the course of trial, on the side of the plaintiffs three



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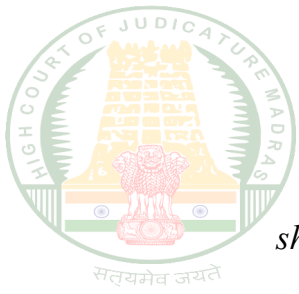
witnesses have been examined as P.W.1 to P.W.3 and Exs.A1 to A16 were marked. On the side of the defendant one witness was examined as D.W.1 and Exs. B1 to B52 were marked. At the conclusion of the trial and considering the evidence available on record, the trial Court dismissed the suit and the appeal preferred by the plaintiffs was also dismissed by confirming the judgment of the trial Court. Now the plaintiffs have filed the Second Appeal.

6. The Second appeal is admitted on the following substantial questions of law:

“(i) Whether the later clause in Ex.A6 will categorically provide that the wife of the testator could alienate the property, if she so desires, would not prevail over the former clause granting her life interest in the C schedule properties and is not Section 88 of the Succession Act attracted ?

(ii) Whether, in any event, even assuming without admitting that only a life interest was granted to the wife under Ex.A6 Will, dated 03.02.1978 would not the same enlarge as absolute Estate under Section 14(1) of the Hindu Succession Act ?

iii) Whether in law the first defendant is estopped from questioning the entitlement of her mother to sell the properties bequeathed to her when



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she herself has purchased certain properties from her mother under

WEB COPY Exs.A13 and A14 ?

iv) Whether the suit is maintainable without the relief for declaration of title?"

7. Mr.T.M.Hariharan, the learned counsel for the appellants / plaintiffs, submitted that the testator, Vaiyapuri, who was the owner of the suit property had given life interest to his wife, Shanmugasundarambal, but his intention was clear that he wanted to make it as a security for her; the recitals of the Will would show that the wife of Vaiyapuri namely Shanmugasundarambal was given with the absolute right, but the Courts below have failed to consider the above aspect; in fact the first defendant herself had admitted the right of her mother Shanmugasundarambal to alienate and encumber 'C' Schedule properties because the mother had executed Exs.A13 and A14 sale deed in favour of the first defendant in respect of a portion of 'C' schedule properties; since Shanmugasundarambal had executed sale deeds in respect of a portion of 'C' schedule properties and the said right is admitted by the first defendant, the same logic is applicable for executing the Will also in favour of the plaintiffs; even assuming that the mother was given with life estate, that will enlarge into absolute estate in view of Section 14(1) of Hindu Succession Act.



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7.1 The Courts below did not consider the pre-existing right of the wife's right to maintenance in order to apply Section 14(1) of Hindu Succession Act in favour of the plaintiff's mother Shanmugasundarambal; despite the plaintiffs have filed an Interlocutory Application in I.A.No.330 of 2011 to amend the plaint to include the prayer for declaration, that was also not considered; when the mother was alive she itself has filed a suit against the first defendant in O.S.No.404/2000 to restrain the Defendants from interfering with her possession and enjoyment of the suit property; so Ex.A12- the Will executed by Shanmugasundarambal has been proved by the evidence of attesting witnesses P.W.2 and P.W.3 .

8. Mr.P.Sathish, the learned counsel for the respondents / defendants, submitted that the first plaintiff has not been given with absolute interest over 'C' schedule properties; the first plaintiff was only given with the right to live in a portion of the house and the first defendant was given with absolute right after the life time of her mother; so the intention of the testator will be lost if the first plaintiff's right to residence in the Item I of the suit property is lost, if Shanmugasundarambal is presumed to have given with the absolute interest; hence, the recitals in the Will cannot be interpreted in a way that would defeat the desire of the testator; the trial Court and the first appellate Court



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have rightly appreciated the materials on record and had chosen to dismiss the suit.

9. On perusal of the Ex.A6 - Will dated 04.02.1978 (equivalent to Ex.B1) it is seen that the Will was executed by the owner of the property, namely the father of the plaintiffs 1 and 2 and the 1st defendant and one Jothi. Even though the Will has got 4 schedules of the property, the present dispute surrounds only in respect of Item I of 'C' schedule properties. As per the Will 'A' schedule property has been bequeathed in favour of the testator's daughter Jothi. 'B' schedule properties have been bequeathed in favour of another daughter Bala Vadivambal who is the first plaintiff herein. The wife of the testator namely Shanmugavadivambal has been given with the absolute right in respect of 'D' schedule properties. Even though the testator had mentioned life interest in respect of 'C' schedule properties in favour of his wife Shanmugasundarambal, in the subsequent part of the Will he had also stated that Shanmugasundarambal can encumber the property by considering the same as her absolute properties.

10. The testator had also stated in the Will that his wife Shanmugasundarambal can enjoy the properties in 'C' schedule till her lifetime and after her lifetime the first defendant Meera has to acquire the



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same absolutely, however with a right of residence to his elder daughter Bala Vadiyambal in the house property. The said property is shown as the Item I in the 'C' Schedule. While the plaintiff's claim that Shanmugasundarambal was given with the absolute right to alienate the 'C' Schedule properties, the first defendant claims that the mother Shanmugasundarambal had been given with only life interest and she did not have any absolute interest over the same.

11. A portion of 'C' Schedule properties appears to have been sold in favour of the first defendant through Exs.A14 and A15. However, the first defendant had stated that she had no necessity to purchase those properties as she was already given with the absolute interest over the same and those sale deeds have been created by the plaintiffs just to strengthen their contention that Shanmugasundarambal had an absolute interest in the 'C' Schedule properties. In fact the plaintiffs claim that Shanmugasundarambal had executed a Will in respect of Item I of 'C' Schedule properties in favour of the plaintiffs on 18.08.2000. The plaintiffs claim that by virtue of Ex.A12-Will they have acquired absolute right in respect of the Item I of 'C' Schedule properties and that the defendants refused to vacate the suit property.

12. It is submitted by the learned counsel for the plaintiffs that as per



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Sec. 88 of the Indian Succession Act, 1925, when two clauses in respect of a gift are irreconcilable, the last clause in the Will shall prevail. For the sale of clarity Sec.88 of Indian Succession Act is extracted under:

“ 88. The last of two inconsistent clauses prevails.—

Where two clauses of gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations

(i)*The testator by the first clause of his Will leaves his estate of Ramnagar “to A ”, and by the last clause of his Will leaves it “to B and not to A ”. B will have it.*

(ii)*If a man, at the commencement of his Will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition will prevail.”*

13. The illustrations given under Section 88 of the Indian Succession Act, would clarify the above provision better. A combined reading of the said provision along with illustration would show that in the event of the testator mentioning a person for whom a particular property is given and if there is a consistency between the earlier clause and later clause in the Will, the later clause will prevail over the earlier one. In the instant case, there is no confusion with regard to the persons who have acquired the property. But the confusion is only with regard to the nature of right attached to a particular property in favour of the legatee. In such case, the Will has to be read as a whole and not in a piece-meal manner.

14. Vaiyapuri thought it fit to give the first plaintiff the right of



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residence along with his other daughter who is the first defendant herein in the Item I of 'C' schedule properties. In fact the first plaintiff has also been given with a part of the landed properties absolutely also. The father had given absolute right over the property in favour of his other daughter Jothi which is prescribed under 'A' schedule. The second plaintiff who is the son of Vaiyapuri has not been given with any properties. The Will makes an explicit reference about the reasons why Vaiyapuri has not chosen to give any property in favour of the second plaintiff. It is stated in the Will that the second plaintiff had opted to live at his own sweet will and hence there was love lost between the father and the son. The mother was given with the life interest only in respect of 'C' Schedule properties and she was not given with life interest in any of the other properties comprised in 'A' or 'B' Schedule.

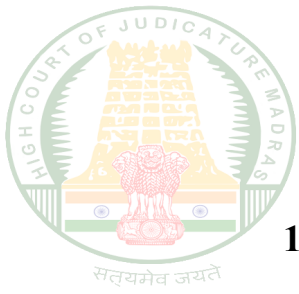
15. The intention of the testator as it is seen from the Will by making a holistic reading of it would show that the father wanted to give individual property to each of his daughters. Though his other two daughters namely the first plaintiff and Jothi were given with 'A' and 'B' Schedule properties absolutely after his lifetime, the 'C' schedule properties given to the first defendant was subjected to the life interest of the mother Shanmugasundarambal. In the house property comprised in Item I of the 'C' Schedule properties, the right of residence was given to the first plaintiff as



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she had a failed marriage and returned back to parents from her husband's place. At no point of time the father thought it fit to give any property in favour of the second plaintiff.

16. The mother Shanmugasundarambal is said to have executed Exs.A13 and A14 sale deeds in favour of the first defendant by selling a portion of 'C' Schedule properties. As the first defendant has been given with absolute right in respect of 'C' Schedule properties, after the lifetime of her mother, there is no need for the mother to execute sale deeds in her favour. Even if the sale deeds have been executed for any extraneous reasons, that can be of no consequence. The first defendant has stated that she has not paid any consideration to the above sale deeds but the plaintiffs claimed that the sale deeds have been executed in favour of the first defendant only because the mother had absolute interest in respect of 'C' Schedule properties. The intention of the testator is constructed in such a manner that it would deprive the absolute interest conferred upon one of the daughters namely the first defendant in respect of 'C' Schedule properties. Since the first plaintiff would lose her right of residence in Item I of the 'C' Schedule properties, the father thought it fit to treat all the daughters equally and he wanted to gift properties to all his daughters.



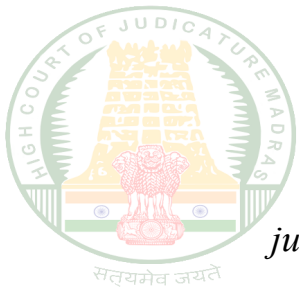
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17. Even recitals as to the absolute interest for Shanmugasundarambal cannot be read and interpreted that it had taken away the right of residence given to the first plaintiff in respect of Item I of 'C' Schedule properties. In fact in the Will, it has been stated in unequivocal terms that the first plaintiff has got no absolute right in respect of Item I of 'C' Schedule properties. So the testator was clear in his intention that he wanted to save Items I of 'C' Schedule properties for his first daughter to reside and the other daughter, the first defendant to acquire it absolutely.

18. The learned counsel for the plaintiffs submitted that as per Section 14(1) of Hindu Succession Act, the mother has a pre-existing right of maintenance in respect of 'C' Schedule properties and hence, that will enhance into absolute interest and Shanmugasundarambal had the entitlement to execute Ex.A12-Will. In this regard the learned counsel for the appellants/plaintiffs cited judgement of the Supreme Court held in ***V.Tulasamma v. Sesha Reddy***, reported in (1977) 3 SCC 99. In the said case it is held that wherever Section 14(1) of Hindu Succession Act is applied, the limited interest expands into full ownership. For the sake of convenient understanding the relevant part of the above judgment is extracted as under:

“5. There appears to be a serious divergence of

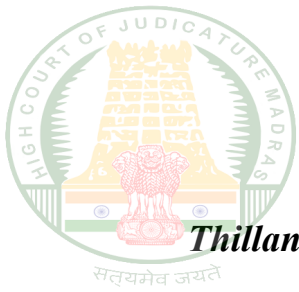


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judicial opinion on the subject and the High Courts have taken contrary views on this point. Some High Courts, particularly, the Bombay, Punjab, Calcutta and Patna have veered round to the view that a right of maintenance claimed by a Hindu widow is a pre-existing right and any instrument or document or transaction by which the properties are allotted to the widow in lieu of her maintenance would only be in recognition of a pre-existing right and would not confer any new title on the widow. Following this line of reasoning the aforesaid High Courts have held that the properties allotted to the Hindu widow even though they conferred a limited interest would fall clearly within the ambit of Section 14(1) of the 1956 Act by virtue of which the limited interest could be enlarged into an absolute interest on the coming into force of the 1956 Act. On the other hand the Orissa, Allahabad, Madras and Andhra Pradesh High Courts have taken a contrary view and have held that as the Hindu widow's right to maintenance is not a right to property, the property allotted to her in lieu of maintenance confers on her a right or a title to the property for the first time and therefore such conferment is protected by Section 14(2) of the 1956 Act and is not covered by Section 14(1). Unfortunately, however, there is no decision of this Court, which is directly in point, though there are some decisions which lend to support the view taken by the Bombay High Court."

19. In *Maharaja Pillai Lakshmi Ammal v. Maharaja Pillai*



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Thillanayakom Pillai, (1988) 1 SCC 99, the Supreme Court reiterated and applied the same principles laid down in **V.Tulasamma v. V. Sesh Reddy, (1977) 3 SCC 99**. The Court emphasized that where a Hindu woman is in possession of property in recognition of her pre-existing right to maintenance, such possession is sufficient to confer absolute ownership, notwithstanding the fact that the property may have been formally conferred through a family arrangement or partition. The Court has affirmed that Section 14(2) would not apply in such circumstances. It also underscored the ratio laid down in *Tulasamma* by stating that the above provision should be interpreted liberally to further the object of empowering Hindu women with full ownership rights.

20. If that kind of interpretation is given to the instant case then Shanmugasundarambal's alleged enhanced absolute interest cannot be restricted to 'C' Schedule properties alone to the detriment of the first defendant and that would have been equally applicable to the other properties mentioned in 'A' and 'B' Schedule properties also. So, the facts are also equally important while applying the settled position of law.

12. The law, as laid down by Gulwant Kaur (supra) and confirmed by Jaswant Kaur (supra), is clear. Property given in lieu of maintenance would solidify into absolute ownership by action of Section 14(1) of HSA, 1956. In other words, the right of



maintenance on its own is apposite for such property to transfer into her sole, unquestionable, and absolute right. The partition deed of 1933, it has been held, is clear that 3.55 Cents of land would be enjoyed by Smt. Veerabhadramma as a life interest and thereafter would devolve upon the two lines of succession, i.e., the sons of late Kallakuri Swami through his first wife and also his second wife.

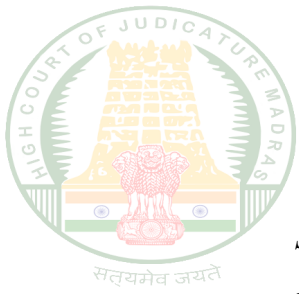
13. In that view of the matter, the appeal fails and is, accordingly, dismissed. Pending application, if any, shall stand disposed of."

21. In this context it is also essential to refer the recent judgment of the Supreme Court held in ***Kallakuri Pattabhiramaswamy V Kallakuri Kamaraju, reported in 2024 SCC OnLine SC 3379***, which is cited by the learned counsel for the respondents. In the said case it is held as under:

"11. Let us now turn back to the instant facts -

Smt.Veerabhadramma was given absolute right to her property, qua 2.09 Cents of land and a life interest in respect of 3.55 Cents of land. This has been consistently held by the Courts below. The appellant-defendants, however, want this Court to interfere with the said concurrent findings and hold that by virtue of Section 14(1) of the HSA, 1956, Smt. Veerabhadramma became the full and absolute owner of all properties, which would necessarily include the disputed land of 3.55 Cents.

The findings of the Courts below, as facts are clear that absolute rights extended only to 2.09 Cents. The record does not bring forth any reason for this Court to take a different view. The



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Shastric right of maintenance given statutory recognition by two pre-constitutional legislations, as noted by V. Tulsamma (supra) and Raghubar Singh (supra), stands satisfied thereby. There have been no averments suggesting that the maintenance given to Smt. Veerabhadramma was insufficient to warrant interference in line with Punni Devi (supra), which states that it has to be sufficient to grant the lady so awarded maintenance to be able to continue a lifestyle, which she has been used to thus far.

22. Just because the first plaintiff had acquired the 'B' Schedule properties without any trouble after the lifetime of her mother, she should not have an eye on the 'C' Schedule properties meant for the first defendant by stating that the mother had pre-existing right and hence she had the absolute right to execute the Will in her favour in respect of Item I of 'C' Schedule properties also. Even for any extraneous reasons if the father wanted to make an absolute security for the mother by giving her the liberty to sell any of the properties according to her necessities, it is difficult to accept that such a necessity has arisen only in respect of the properties involved in Exs.A13 and A14 sale deeds alone. If the testator had thought it fit to bequeath the Item I of 'C' Schedule properties in favour of plaintiffs 1 and 2, he would have given the absolute interest to them after the lifetime of the mother. He did not intend to give any absolute property to the second plaintiff, and he made it



clear that the first plaintiff can only have a right to reside in Item I of 'C'. So the reference as to the right to alienate any of the properties in the Will for the mother would only refer to her indispensable needs only and not the necessity or desire to bequeath the same to the first and second plaintiffs. Doing so is nothing but contrary to and defeating the intention of original testator Dr.Vaiyapuri.

23. Execution of the Will by the mother in favour of plaintiffs 1 and 2 will not in any way satisfy her pre-existing right, namely her maintenance. So the plaintiffs cannot invoke Section 14(1) of the Hindu Succession Act. Even if it is presumed to be applicable, that cannot be extended to the extent of defeating the very intention of the original testator Vaiyapuri and place his daughters to stand at an unequal and imbalanced circumstances. In other words, the validity given to Ex.A12 would defeat the very intention of the original owner Vaiyapuri who had executed Ex.A6 Will. Vaiyapuri had positive and balanced interest in favour of his daughters and he had a negative emotion towards his son, the second plaintiff.

24. It seems that plaintiffs 1 and 2 have joined between themselves and make claims by reading the recitals in the Will suiting to their convenience. The wrongful construction of the recitals of the Will cannot be allowed to



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defeat the desire of the testator and to the detriment of one of the legatees in acquiring the properties as settled down in the Will.

25. The earlier suit filed by the plaintiff's mother cannot act as *res judicata* as it was not pressed after the death of Shanmugasundarambal. So in the absence of Shanmugasundarambal it cannot even be ascertained whether she had really filed the suit or her name was used by someone else to file the suit. Thus all the substantial questions of law are answered against the appellants.

26. Since both the trial Court and the first appellate Court have rightly appraised the evidence available on record by giving a holistic reading to the Will (Ex.A6), I feel there is no need for interference.

27. In the result, the second appeal is dismissed and the judgment and decree passed by the learned Additional District Judge (F.T.C.1), Salem dated 14.09.2011 in A.S.No.18/2011 is confirmed. No costs.

16.04.2025

Index:Yes
Speaking Order
Neutral Citation Case : Yes



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To:

1. The Additional District Judge (F.T.C. 1), Salem.
2. The Second Additional Subordinate Judge (F.T.C.1), Salem.



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R.N.MANJULA, J.

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Pre-delivery judgment made in
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