



A.S.No. 426 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 426 of 2018

1. R. Subramaniam
2. S.Kashthuri

... Appellants

Vs.

1. Bhuvaneshwaran
2. Jagadeeswaran
3. S.Eswaramoorthy

Athayee Ammal (died)

4. Premavathy
5. Ragupathy
6. Akalya

.. Respondents

PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 31.01.2018 passed by the I Addl. District Court, Salem in O.S. No.176 of 2011.



WEB COPY



A.S.No. 426 of 2018

For Appellants : Mr.N.Manoharan

For Respondents : Mr.V.Raghavachari
Senior Advocate for
Mr.P.Sivakumar for R1 & R2

R3 to R6 – No appearance

JUDGMENT

The appellants herein are the defendants 1 and 2 in the suit in O.S.No.176 of 2011, on the file of I Addl. District Judge, Salem filed by the respondents/plaintiffs 1 and 2 for the relief of partition to divide the entire suit properties into two equal shares and allot one share to the plaintiffs and to declare the sale deeds dated 11.06.2009 and 25.06.2009 stand in the name of defendants 1 and 2 executed by 3rd defendant as power of attorney of 4th defendant as null and void and permanent injunction and other consequential relief in respect of suit properties with respect to item Nos.1 to 9 as described in the plaint schedule. The defendants 1 and 2 have contested the suit by filing written statement and other defendants remain exparte. The plaintiffs and defendants 1 and 2 adduced evidence and based on that, nine issues were framed by the trial judge and finally held that the suit filed by the plaintiffs is sustainable one



A.S.No. 426 of 2018

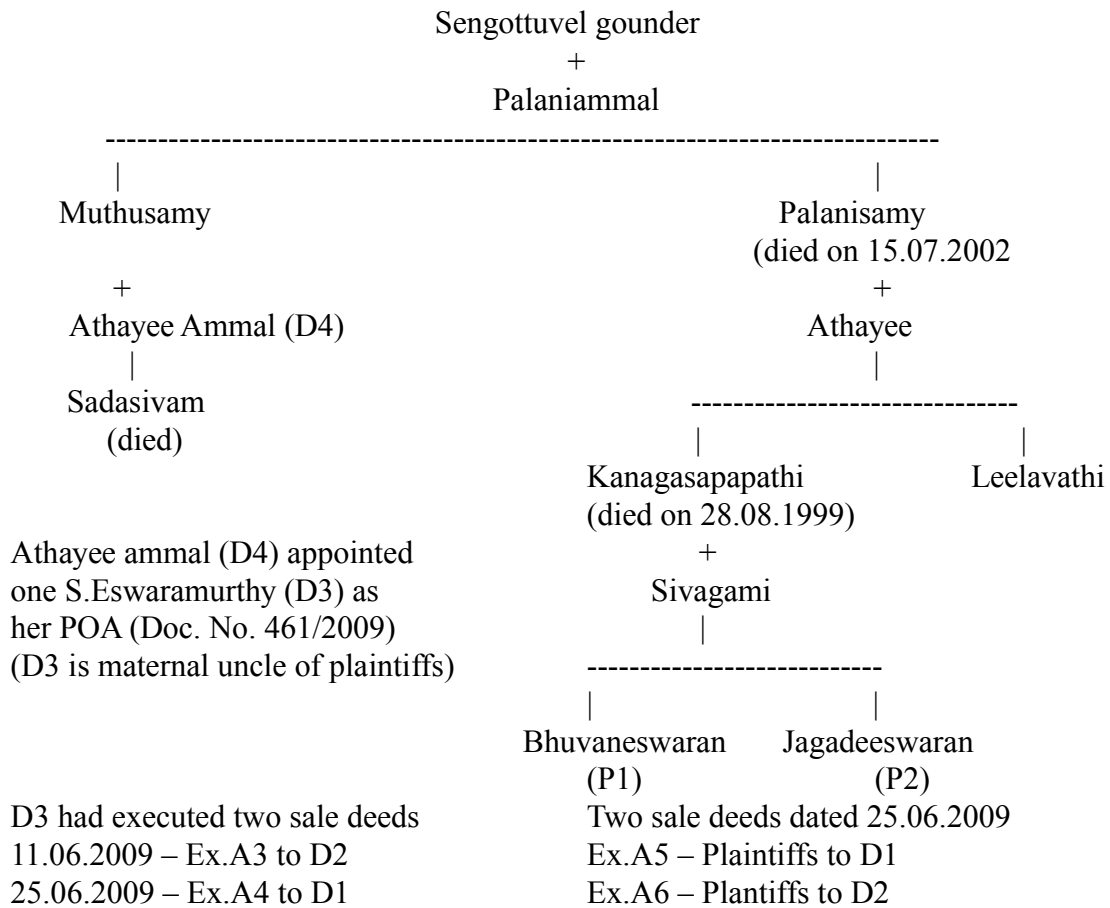
WEB COPY

and they are entitled for the relief of partition as they prayed for.

Accordingly, the suit was decreed and consequently declaratory relief was also granted as prayed for. Challenging the said findings of the trial court, the defendants 1 and 2 have preferred this Appeal Suit.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Geneological tree is extracted hereinbelow :-





A.S.No. 426 of 2018

WEB COPY

4. Brief facts of the case is as follows :-

The suit properties along with other properties are belong to Sengottuvelu gounder, who died intestate leaving behind his two sons Muthusamy and Palanisamy. Muthusamy is the husband of 4th defendant Athayee Ammal. The plaintiffs are great grandsons of Sengottuvelu gounder born through his son Palanisamy. Muthusamy died intestate leaving behind his wife 4th defendant Athayee Ammal and his minor son Sathasivam. The relationship as stated above is undisputed fact.

5. After the death of Sengottuvelu gounder and his son Muthusamy, Muthusamy's wife Athayee Ammal/4th defendant on behalf of her son Sadhasvam filed a suit for partition in O.S.No.28 of 1951 against her mother-in-law Palaniammal and her husband's brother Palanisamy. Later, the said suit was compromised and a compromise decree was passed on 20.08.1951. In that decree, Palaniammal was allotted 'C' schedule property as being the widow of original owner/deceased Sengottuvelu gounder with limited interest, but after 1956 Act, under Sec.14 of Hindu Succession Act, 1956, her limited right became absolute right, thereby she was enlarged as

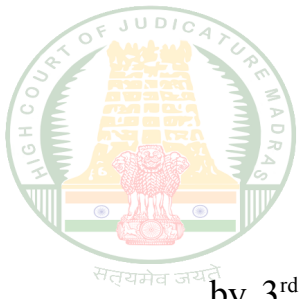


A.S.No. 426 of 2018

WEB COPY

absolute owner and out of love and affection, she executed a registered Gift Settlement deed in favour of her son Palanisamy and his son, 1st plaintiff, then he was a minor on 12.09.1978 and given the life interest to her son Palanisamy and thereafter, absolute right given to 1st plaintiff and male legal heir born subsequently. Accordingly, the 2nd plaintiff, who was born later also derived absolute right, thereby plaintiffs 1 and 2 alone are absolute owners of suit properties as per the intention of the said Palaniammal. After the death of their father, the plaintiffs became absolute owners of the suit properties.

6. While so, the defendants 1 and 2, husband and wife to whom, they have sold half share in the suit properties except Survey No.55/3B to the 1st defendant through the sale deed dated 25.06.2009 and the remaining half share in the suit property belong to plaintiffs, but the defendants 1 and 2 claimed that they have purchased another half share in the suit property from 3rd defendant by means of two sale deeds as a power agent of Athayee Ammal. On verification, they have found that on 11.06.2009 and 25.06.2009 two sale deeds were executed in favour of defendants 1 and 2

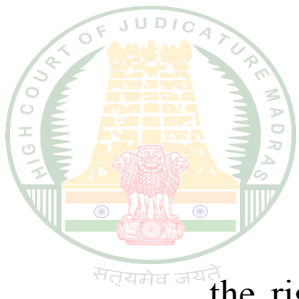


A.S.No. 426 of 2018

WEB COPY

by 3rd defendant as if the 4th defendant is the absolute owner of the suit property in respect of remaining half share. Absolutely, Athayee Ammal/4th defendant has no right to convey the suit property to the defendants 1 and 2, besides, she was an attesor of the settlement deed executed by her mother-in-law Palaniammal. Furthermore, they have denied that there was no oral partition effected in the family, but there was a recital in the sale deed as if there was a oral partition as well as Will said to be executed by their father and their great grandfather in the year 1988 as well as in the year 2000. There was no oral partition effected and the alleged sale deeds were also false and fraudulently those sale deeds were created by the defendants. Hence, the plaintiffs have filed a suit for partition claiming half share against defendants 1 and 2 and also prayed to declare the sale deeds executed by 3rd defendant as power agent of 4th defendant in favour of defendants 1 and 2 in respect of remaining half share of suit property, which belongs to defendants as null and void.

7. The defendants 1 and 2 have contested the case, admitted the relationship, but disputed the other allegations. They have totally denied



A.S.No. 426 of 2018

WEB COPY

the right of plaintiffs' grandmother Palaniammal and contended that she has no right to execute the Gift Settlement deed in favour of their grandsons/plaintiffs and her limited interest given in the compromise decree would not be enlarged under Sec.14(1) of Hindu Succession Act. The defendants further submitted that already there was a suit filed by plaintiffs grandmother and their paternal Aunt Leelavathi filed a suit in O.S.No.114 of 2010 on the file of Sub-Court, Sankari for the relief of partition, wherein these plaintiffs have filed their written statement as defendants 1 and 2 in that suit, in which they have admitted that there was a oral partition held in the family as well as Will executed by their father and their grandfather. Therefore, the alleged Gift Settlement Deed relied on by the plaintiffs was disowned by them in the earlier suit proceedings. Suppressing all the facts, they came forward with the present suit as such is totally unsustainable one and they have not approached the court with clean hands.

8. Further, they would contend that as per oral partition, Athayee Ammal/4th defendant was allotted with southern half portion, in which as



A.S.No. 426 of 2018

WEB COPY

absolute owner, she gave power of attorney to 3rd defendant, who is maternal uncle of plaintiffs. Accordingly, he sold the property to defendants 1 and 2 on 11.06.2009 and 25.06.2009 for a valid consideration. On 25.06.2009 the plaintiffs sold the remaining half share to the defendants 1 and 2 and they are well-educated persons, very well knew about the recitals in the sale deeds, thereby they are not permitted to plead contra against the recitals of sale deeds as per Sec.92 of Evidence Act. Furthermore, colluding with their mother, they have filed a suit in O.S.No.110 of 2010 collusively in order to grab the property from the defendants. Accordingly, the suit properties are not allotted to Palaniammal as per the compromise decree and the plaintiffs in order to grab the money colluded with other family members filed a vexatious suit. While the sale deed executed by 3rd defendant on 25.06.2009, these plaintiffs were present and based on the guideline value, the sale deeds were executed. After the execution of sale deeds, they were in possession of the property and plaintiffs are not in possession of the property as they claimed. After the purchase, they have constructed a terraced building in the in Survey No.55/3B and spent huge amount, however, due to the



A.S.No. 426 of 2018

WEB COPY

escalation of guideline value, the plaintiffs demanded money, but they have refused. Hence, they have filed a vexatious suit and prayed to dismiss the suit. They would further submit that original owner Senguttuvel was died in the year 1951 and thereafter, his legal heirs filed a suit in O.S.No.28 of 1951 and a compromise decree was passed. Accordingly, 'A' schedule property was allotted to Athayee Ammal/4th defendant and her son Sathasivam. 'B' schedule property was allotted to Palaniammal, grandmother of plaintiffs with limited life interest. After her death, it devolves upon her son equally. Based upon that, Palanisamy and Muthusamy's son Sathasivam are equally entitled to share. Sathasivam, was died as unmarried leaving behind his mother Athayee Ammal/4th defendant, as a only heir, she is entitled for half share and the plaintiffs are entitled for remaining half share. Both the plaintiffs have orally partitioned the property in the year 1975, in which northern half share was allotted to Athayee Ammal/4th defendant and southern half share was allotted to plaintiffs' grandfather Palanisamy.



A.S.No. 426 of 2018

WEB COPY

9. While so, Athayee Ammal/4th defendant sold her half share to 2nd defendant through her power agent/3rd defendant and the plaintiffs, being owners of southern portion of suit properties as per the Will executed by their grandfather Palanisamy and their father Kanagasabapathy, they have sold their half share for a valid consideration to 2nd defendant as if as per the Will, they are the absolute owners of suit property. After the purchase, now the defendants 1 and 2 became absolute owners of 'B' schedule property. But, the plaintiffs not claimed any relief of declaration, without which, the suit is not maintainable. So also, other properties are not included. Hence, the suit is bad for partial partition. The other defendants have not contested the case. The power of attorney/3rd defendant remains exparte. The 4th defendant died during the pendency of proceedings. The defendants 5 to 7 filed another suit in O.S.No.95 of 2011 in respect of Survey No.55/3B, but they remained exparte in the suit proceedings.

10. Before the trial court, both plaintiffs and defendants 1 and 2 adduced oral and documentary evidence. On the side of plaintiffs, the 1st plaintiff was examined as P.W.1 and the documents Ex.A1 to Ex.A8 were

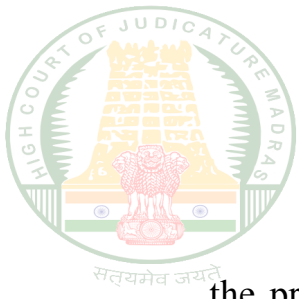


A.S.No. 426 of 2018

WEB COPY

marked. On the side of defendants, D.W.1 to D.W.5 were examined and the documents Ex.B1 to Ex.B30 were marked. On the side of court, Ex.X1 was also marked.

11. Considering both oral and documentary evidence, the trial court framed nine issues. Considering the evidence on record, the trial judge held that relationship between parties is undisputed one. Based upon the compromise decree passed in O.S.No. 28 of 1951, plaintiffs were allotted 'C' schedule property, which is the subject matter of the suit and as per the compromise decree, limited interest given to her became absolute interest after the enactment of 1956 Act. So, as absolute owner, she executed a Gift Settlement deed in favour of plaintiffs in the year 1979 and a copy of document dated 12.09.1978 was marked. However, the original Gift settlement deed was not produced. But, the trial judge observed that though original document was not produced, Athayee Ammal/4th defendant was the attestor of the document, therefore, she was already aware of Gift Settlement deed. Hence, the non-production of original document as well as non-examination of witnesses to the said settlement deed is not fatal to



A.S.No. 426 of 2018

WEB COPY

the proceedings. Since 4th defendant signed as a witness in the said Gift deed, Ex.A2, the said deed deemed to be acted upon and based on the said deed, half share was sold to defendants 1 and 2 through the sale deeds Ex.A5 and A6 and the remaining half share belong to plaintiffs, in which 4th defendant/Athayee Ammal has no right and title. Therefore, the power of attorney executed by 4th defendant for the remaining half share in favour of 3rd defendant is not valid, besides, Athayee Ammal/4th defendant has not described how the property belongs to her. Hence, the remaining half share sold to defendants 1 and 2 by the Power Agent/3rd defendant as such is invalid and not bind the plaintiffs. The defendants 1 and 2, who are purchasers, alone are disputing the plaintiffs' right. Hence, the plaintiffs rightly filed a suit against them, but the suit is not effected for non-joinder of necessary parties. Therefore, after selling half share in favour of defendants 1 and 2, the plaintiffs are entitled to remaining half share in the suit property. Accordingly, for the relief of partition, the decree was granted and to that effect also held that 4th defendant has no right to convey the property to defendants 1 and 2, thereby two sale deeds also declared as null and void. Accordingly, the suit was decreed as prayed for.



A.S.No. 426 of 2018

WEB COPY

Now, challenging the said findings, this Appeal Suit was preferred by the defendants 1 and 2.

12. The learned counsel for defendants 1 and 2 would submit that trial judge totally failed to appreciate the facts and evidence on record properly and erroneously granted the relief of partition without considering the recitals found in the sale deeds executed by them and also not considered the legal proposition of Sec.92 of Evidence Act, which clearly barred the plaintiffs claim as they are not entitled to adduce oral evidence against the written recitals. Hence, the findings rendered by the trial court is perverse and liable to be set aside.

13. Per contra, the learned counsel for plaintiffs 1 and 2 would submit that as per the Gift Settlement deed executed by great grandmother Palaniammal marked as Ex.A2, life interest was given to her son Palanisamy/grandfather of plaintiffs, thereby absolute right was given to plaintiffs. Accordingly, the plaintiffs are the absolute owners of 'C' schedule property allotted to her as per the compromise decree passed in

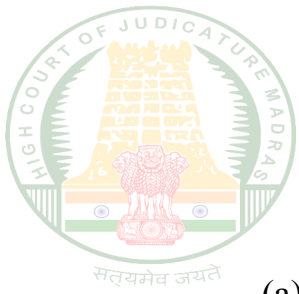


A.S.No. 426 of 2018

WEB COPY

O.S.No.28 of 1951. Thereafter, the plaintiffs have sold their half share to the defendants 1 and 2 and retained remaining half share, but clandestinely they have obtained sale deed from 4th defendant through her power agent/3rd defendant, who has no right and title over the suit property. But, the remaining half share was said to be purchased through sale deeds dated 11.06.2009 and 25.06.2009. The trial judge on considering the evidence on record rightly held that Athayee Ammal/4th defendant has no right to convey the property. Hence, the trial judge granted the relief of declaration of sale deeds as null and void and also rightly granted the half share in favour of plaintiffs, which is absolutely belong to them as per Ex.B2 Gift Settlement deed dated 12.09.1979 . Hence, the reasons assigned by the trial judge is well-reasoned one, needs no interference of this court. Accordingly, he prayed to dismiss the Appeal Suit as no merit.

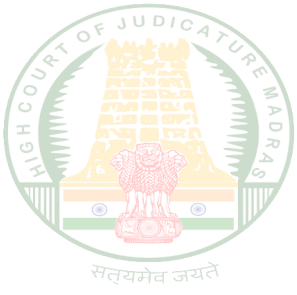
14. Considering both side submissions, it reveals the fact that the plaintiffs great grandmother Palaniammal entitled to execute a Gift Settlement deed as she was given life interest in the property as per the terms of compromise decree. The points for consideration is as follows:-



A.S.No. 426 of 2018

WEB COPY

- (a) Whether limited right can enlarge as absolute right as per Sec.14(1) of Hindu Succession Act or under Sec.14(2) would apply?
- (b) Whether the trial court is right in granting the decree in favour of plaintiffs ignoring the admissions made by them by filing a written statement in another suit in O.S.No.114 of 2010 on the file of Sub-Court, Sankari, wherein they have admitted the oral partition as well as Will executed by father and grandfather?
- (c) Whether the plaintiffs are estopped by their conduct.
- (d) Whether the plaintiffs are disowned their Gift Settlement deed Ex.A2 by entering into oral partition as well as execution of Will happened in their family as per recitals found in Sale deeds Ex.A5 and Ex.A6?
- (e) Whether the findings rendered by the trial judge that the 4th defendant has no right to convey the property to defendants 1 and 2 as such is erroneous one and liable to be set aside in respect of sale deeds executed by her in favour of defendants 1 and 2?



A.S.No. 426 of 2018

WEB COPY

15. The relationship between the parties is undisputed one. So also, the suit property originally belong to plaintiffs great grandfather Palanisamy is also undisputed one. After the death of Sengottuvelu, there was a suit in O.S.No 28 of 1951 was filed between the legal heirs, in which 'C' schedule property was allotted to Senguttuvel's wife Palaniammal, which is subject matter of the suit. The compromise decree passed in O.S.No.28 of 1951 also admitted by both parties. Though the plaintiffs' claimed the said 'C' schedule property and other property, according to defendants 1 and 2, all the present suit properties is not form and part of 'C' schedule as per the terms of compromise decree Ex.A1. By perusal of compromise decree marked as Ex.A1, there were various Survey numbers. Admittedly, after 1951, sub-division was effected. So, there may be a difference in identifying the property with correct survey number. But, as per the contention of plaintiffs, the suit properties are allotted to Palaniammal as 'C' schedule property.



A.S.No. 426 of 2018

WEB COPY

16. According to plaintiffs, after the said compromise decree, though the limited interest to maintain herself was given to Palaniammal, after the enactment of 1956 Act, by virtue of Sec.14(1) of the Hindu Succession Act, pre-existing right of a Widow Palaniammal enlarged into absolute right. Thereafter, on 12.09.1978, she being absolute owner executed a registered Gift Settlement deed by giving life interest to her grandson Kanagasabapathy and absolute right was given to 1st plaintiff and thereafter, if any male born to Kanagasabapathy, the 2nd plaintiff was born subsequently, thereby both plaintiffs 1 and 2 have got absolute right over the suit property after the death of their father and the said gift settlement deed was executed marked as Ex.A2. The learned counsel for appellants would submit that Athayee Ammal/4th defendant was one of the attesor and she was aware of execution of Gift Settlement deed and not raised any objection till her life time. Therefore, by relying Ex.A2, the plaintiffs claimed absolute right over the 'C' schedule property.



A.S.No. 426 of 2018

WEB COPY

17. Per contra, learned counsel for defendants 1 and 2 would submit that limited interest was given to Palaniammal in respect of 'C' schedule property in the compromise decree without any encumbrance and absolute right was given to her son Palanisamy and Sathasivam born to another son Muthusamy. Therefore, as per Sec.14(1) would not apply and Sec.14(2) alone would apply to the present facts of the case. To support his contentions, he has relied on the ratio laid down in the following propositions :-

(a) Reported in **2022 (1) CTC 402** in the case of **Jogi Ram vs. Suresh Kumar and others**, wherein the Apex Court in paras 29, 30, 32 and 33 held as follows :-

“29. In the light of the aforesaid passage, [Sections 14\(1\) & 14\(2\)](#) of the said Act were entered by the Court. The word “possessed” was held to be used in a wide sense not requiring a Hindu woman to be an actual or physical possession of the property and it would suffice if she has a right in the property. The discussion in para 33 thereafter opines that the intention of the Parliament was to confine sub-section (2)



of [Section 14](#) of the said Act only to two transactions, viz., a gift and a will, which clearly would not include property received by a Hindu female in lieu of maintenance or at a partition. The intention of the Parliament in adding the other categories to sub-section (2) was merely to ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in [Section 14\(2\)](#) of the said Act.

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

32. The testator in the present case, Tulsi Ram, had taken all care for the needs of maintenance of his wife by ensuring that the revenue generated from the estate would go to her alone. He, however, wished to give only a limited life interest to her as the second wife with the son inheriting the complete estate after her lifetime. We are, thus, of the view that it would be the provisions of [Section 14\(2\)](#) of the said Act which would come into play in such a scenario and Ram Devi only had a life



interest in her favour. The natural sequittur is that the respondents cannot inherit a better title than what the vendor had and, thus, the view taken by the trial court and the first appellate court is the correct view and the sale deeds in favour of the respondents cannot be sustained.

33. On consideration of the second aspect, we must begin by stating that the sequence of litigations can hardly be said to classify the respondents as bona fide purchasers. The first endeavour was by the daughter of Ram Devi by seeking what is undoubtedly a collusive decree when she had no interest in the property. She then sought to create lease interest in the property. Both these aspects were held against Ram Devi and her daughter right till the Supreme Court in the first round of litigation clearly opining that Ram Devi had only a limited estate in the property. Despite having lost right till the Supreme Court, the sale deeds were intervening factors even during the pendency of the litigation which went against the vendor Ram Devi.”

(b) Reported in **2013 (4) SCC 636** in the case of ***Shivdev Kaur (dead) by LRs. and others vs. R.S.Grewal***, wherein the Apex Court held as follows :-



“B. Family and Personal Laws – Hindu Law – Hindu Succession Act, 1956 – Sec.14(2) – Limited right acquired under Will allegedly in lieu of pre-existing right (of maintenance of destitute widow) – Need to raise pleadings in courts below and establish the same on facts.

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

18. To encounter the same, the learned counsel for plaintiffs would submit that Sec. 14(1) alone apply to the properties granted to a female



A.S.No. 426 of 2018

WEB COPY

Hindu in virtue of pre-existing right of maintenance. For that, he has relied on the ratio laid down in the following propositions :-

(a) Reported in **1977 (3) SCC 99** in the case of ***V.Tulasamma and others vs. Sesha Reddy (dead) by LRs.***, wherein the Apex Court held as follows :-

“Hindu Succession Act, 1956 – Sections 14(1) and (2) – Section 14(2) is in the nature of a proviso to Sec.14 (1) and must be construed strictly without impinging on the amplitude of Sec.14(1) – Sec.14(1) applies to properties granted to a female Hindu in virtue of a pre-existing right of maintenance – Sec. 14(2) applies when property is granted to a female Hindu for the first time without any pre-existing right.

.....71. Now, let us consider how the properties in question came to be acquired by the appellant under the compromise. The appellant claimed maintenance out of the joint family properties in the hands of the respondent who was her deceased husband's brother. The claim was decreed in favour of the appellant and in execution of the decree for maintenance, the compromise was arrived at between the parties allotting the properties in question to the appellant for her maintenance and giving her limited interest in such properties. Since the properties were allotted to the appellant in lieu of her claim for



maintenance, it becomes necessary to consider the nature of the right which a Hindu widow has to be maintained out of joint family estate. It is settled law that a widow is entitled to maintenance out of her deceased husband's estate, irrespective whether that estate may be in the hands of his male issue or it may be in the hands of his coparceners. The joint family estate in which her deceased husband had a share is liable for her maintenance and she has a right to be maintained out of the joint family properties and though, as pointed out by this Court in [Rant Bai v. Shri Yadunanden Ram](#),⁽¹⁾ her claim for maintenance is not a charge upon any joint family property until she has got her maintenance determined and made a specific charge either by agreement or a decree or order of a court, her right is "not liable to be defeated except by transfer to a bona fide purchaser for value without notice of her claim or even with notice of the claim unless the transfer was made with the intention of defeating her right". The widow can for the purpose of her maintenance follow the joint family property "into the hands of any one who takes it as a volunteer or with notice of her having set up a claim for maintenance". The courts have even gone to the length of taking the view that where a widow is in possession of any specific property for the purpose of her maintenance, a purchaser buying with notice of

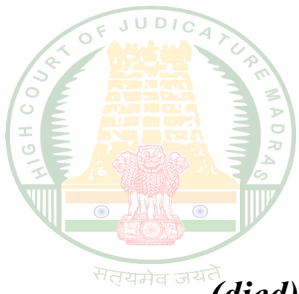


her claim is not entitled to possession of that property without first securing proper maintenance for her, vide Rachawa & Ors. v. Shivayanappa (2) cited with approval in Ranibai's case (supra). It is, therefore, clear (1) [1969] 3 S.C.R. 789. (2) I.L.R. 18 Bom. 679 that under the Sastric Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically Charged in the joint family property and even .if no specif- ic charge i.s created, this right would be enforceable against joint family property in the hands of a volunteer or a purchaser taking it with notice of her claim. The right of the widow to be maintained is of course not a jus in rein, since it does not give her any interest in the joint family property but it is certainly jus ad rem, i.e., a right against the joint family property. Therefore, when specific property is allotted to the widow in lieu of her claim for maintenance, the allotment would be in satisfaction of her jus ad rem, namely, the right to be maintained out of the joint family property. It would not be a grant for the first time without any pre-existing right in the widow. The widow would 'be getting the property in virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre- existing right and not



making a grant of the property to her for the first time without any antecedent right or title. There is also another consideration which is very relevant to this issue and it is that, even if the instrument were silent as to the nature of the interest given to the widow in the property and did not, in so many terms, prescribe that she would have a limited interest, she would have no more than a limited interest in the property under the Hindu law as it stood prior to the enactment of the Act and hence a provision in the instrument prescribing that she would have only a limited interest in the property would be, to quote the words of this Court in Nirmal Chand's case (supra), "merely recording the true legal position" and that would not attract the applicability of sub-section (2) but would be governed by sub-section (1) of [section 14](#). The conclusion is, therefore, inescapable that where property is allotted to a widow under an instrument, decree, order or award prescribes a restricted estate for her in the property and sub-section (2) of [section 14](#) would have no application in such a case."

(b) Reported in **1993 SCC Online AP 108 : 1993 (2) AP LJ 196 (DB) : 1993 (2) AP LJ (SN) 19 : AIR 1994 AP 147 : 1993 (3) ALT (NRC 2) 5 : 1993 (2) An WR 192 : 1994 (1) HLR 31** in the case of **Mangamma**



A.S.No. 426 of 2018

WEB COPY

(died) and another vs. M.B. Subbaramappa Nayaimvaru and others,

wherein this Court held as follows :-

“Hindu Succession Act, 1956, Section 14 – Property gifted by deed to kept mistress and remained in her possession for long time – Donee files suit for maintenance against legal heirs – Ends in compromise – Compromise deed creates life estate for the donee with respect to certain property – Also creates right to retain possession of another property till the former property is made habitable by the defendants – Defendants fail – Donees right to be in possession is in recognition of pre-existing right as permanent kept-mistress as recognised by compromise deed and falls within Sec.14(2) of the Act and is outside the purview of sub-section (2).”

(c) Reported in **2016 (2) SCC 56** in the case of **Jupudy Pardha**

Sarathy vs. Penatapati Rama Krishna and others, wherein the Apex

Court held as follows :-

“A. Family and Personal Laws – Hindu Succession Act, 1956 – Sec.14(1) or Sec.14(2) – Applicability – Property given to Hindu woman in lieu of her pre-existing right of maintenance, even if by will creating only life interest, same would get



A.S.No. 426 of 2018

transformed into absolute right by operation of Sec.14(1) – Even in absence of express words in will that life interest granted to her is in lieu of her maintenance, if same can be gathered from nature of arrangements made in will for her enjoyment of the property and if no one disputed the arrangement pursuant to which she continued to enjoy the property in lieu of maintenance, then no pleading and further proof required to substantiate the fact – Property Law – Transfer of Property Act, 1882, Ss.7,8 and 54.”

19. Considering both side submissions, coming to the facts in hand, as per compromise decree Ex.A1 passed in O.S.No.28 of 1951, Palaniammal, who is 2nd defendant, against whom, her grandson filed a suit for partition, wherein a compromise was arrived between the parties. Accordingly, 'C' schedule property was allotted to the said Palaniammal and the terms of the said compromise is extracted hereunder :-

“The A schedule properties are allotted to the plaintiff, the B schedule properties to the first defendant and C schedule properties are allotted to the 2nd defendant. The plaintiff and the first defendant are entitled to the A and B schedules respectively absolutely. The 2nd defendant will take the C schedule properties



A.S.No. 426 of 2018

WEB COPY

for her lifetime without any powers of encumbrance or alienation. She will be entitled to take a woman's estate as per the Hindu Law. After her death, the plaintiff and the first defendant will take the C schedule properties in equal moieties absolutely. If either the plaintiff or the first defendant or both of them are not alive at the time of her death, their respective heirs shall take the properties in equal moieties as aforesaid."

The said compromise decree was passed on 20.08.1951. Thereafter, Hindu Succession Act, 1956 came into force.

20. Accordingly, Sec. 14(1) of the Act reads as follows :-

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

Explanation to sub-section (1) of Section 14 of the said Act defines the meaning of "property" in this sub-section to include both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by



A.S.No. 426 of 2018

prescription, or in any other manner whatsoever, including Stridhana. The explanation is quite expansive.

Sec. 14 (2) of the Act reads as follows :-

“Sub-section (2) of Sec.14 of the said Act is in the nature of proviso. It begins with a “non-obstante clause’. Thus, it says that “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.”

Thus, nothing contained 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, wherein restricted interest is prescribed. The object of sub-section (2) would clearly indicates that if any property acquires through any other instrument or under the Decree, Sec.14(1) of the Act would apply. Since it was not received by her in lieu of maintenance as a pre-existing right, as per the compromise decree, limited interest was given to her. Therefore, as per the said compromise decree

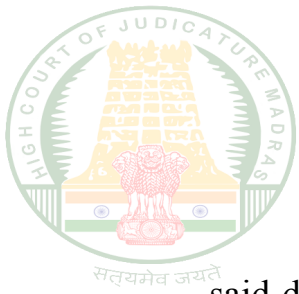


A.S.No. 426 of 2018

WEB COPY

alone, the limited interest given to her. Hence, through the said decree an instrument clearly declare her limited interest over the property. So, Sec.14(2) of the Act alone would apply and not Sec.14(1) of the Act. To that effect, the authorities relied on by the appellants/defendants would clearly applicable to the facts of the case and the authorities relied on by the respondents/plaintiffs 1 and 2, though the ratio is acceptable one, not applicable to the facts of the present case. Therefore, the trial court erroneously held that Sec.14(1) of the Hindu Succession Act would apply to the facts of present case as such is erroneous one and liable to be set aside. Accordingly, the issue no.1 is answered. Eventually, Palaniammal is having limited interest and not absolute right over the property as claimed by the plaintiffs. Therefore, the alleged gift settlement deed Ex.A2 is invalid document under law as she has no right to execute the said document as absolute owner.

21. Even assuming that there is a settlement deed, but the plaintiffs not produced the original settlement deed, however they claimed that 4th defendant/Athayee Ammal was the attestor of document had known the



A.S.No. 426 of 2018

WEB COPY

said document much earlier and also not raised any objections. Therefore, the non-production of the document is not fatal to the proceedings according to the respondents/plaintiffs 1 and 2. By way of reply, learned counsel for appellants/defendants would submit that mere attesting the document would not amount to know the contents. But, the contents of the document would clearly applicable to the facts of the case. The original Gift settlement deed was also not produced by the plaintiffs. Since they have claimed absolute right based on the said document, they bound to prove the settlement deed independently, but they failed before the trial court. Moreover, as per the recitals of sale deeds, Ex.A5 and Ex.A6 executed by them in favour of defendants 1 and 2, there is no mentioning about the alleged gift settlement deed as rightly pointed out by the learned counsel for appellants. But the trial court failed to take note of the said aspect. Even assuming that Palaniammal had absolute right for the aforesaid reasons, the plaintiffs are not entitled to claim any right based on the alleged Gift Settlement deed Ex.A2.



A.S.No. 426 of 2018

WEB COPY

22. Another point is to be decided whether there was a oral partition.

According to plaintiffs, defendants 1 and 2 are close relatives and the sale deeds were preferred by them and though they were not aware of recitals of documents, they are supposed to sign the document, not permitted to read the contents. Per contra, the learned counsel for appellants/defendants argues that there is a suit filed by plaintiffs' mother and her aunty against these plaintiffs, who are defendants in the suit in O.S.No.114 of 2010, wherein the plaintiffs have filed a written statement, in which they have admitted oral partition as well as execution of Will in the family and the said registered document is marked as Ex.2, but the trial court has not appreciated the said document. In fact, plaintiffs are estopped by their conduct. To that effect, they have relied the ratio laid down in the following propositions :-

(a) Reported in **2011 (10) SCC 420** in the case of ***Cauvery Coffee Traders vs. Hornor Resources (International) Company Ltd.***, wherein the Apex Court held as follows :-

“A party cannot be permitted to "blow hot and cold", "fast and



A.S.No. 426 of 2018

loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience."

(b) Reported in **1997 L.W.** in the case of **Margachari V.K.** vs.

M.R.Krishnaswami Mudaliar etc., wherein this Court held as follows :-

"13. We are equally in full agreement with the finding of the learned single Judge that the first appellant is not entitled to relief, since he did not claim during the trial, that he was an agriculturist. It is admitted that in the suit the appellants claimed benefits under the Act 38 of 1972. That Act was passed to provide relief to certain indebted persons in the State of Tamil Nadu. A 'debtor' is defined as any person from whom any debt is due. The first proviso excludes a person from falling within the category of a debtor under certain circumstances, provided, that a person shall not be deemed to be a debtor, if he is an agriculturist as defined under the Tamil Nadu Agriculturists Relief Act 4 of 1938 and entitled to the benefits of the Act."



A.S.No. 426 of 2018

WEB COPY

23. Considering the aforesaid propositions and on perusal of Ex.B2 written statement filed by these plaintiffs as defendants in the suit in O.S.No. 114 of 2010, wherein they have claimed right over the property based on the oral partition as well as Will executed by their father as well as their great grandfather. The recitals of written statement in paras 15, 16, 17, 18, 19, 22 and 24 reads as follows :-

“15. The defendant submits that the land in Survey No.31/2B extent 0.11.5 hec., Survey No.32/1B extent 0.09.0 hec., Survey No.32/2A extent 0.47.5 hec, Survey No.33/1 extent 0.92.0 hec., Survey No.33/3 extent 0.17.0 hec., Survey No.32/2B extent 0.5.5 hec. and Survey No.32/5 extent 0.18.0 hec., Survey No.35/6A extent 0.96.0 hec. and other lands originally allotted to Palaniammal, wife of Sengottuvelu Gounder in the said compromise decree. The said Palaniammal was given only a life estate and after her death, her son Palanisamy and Muthusamy's son Sadasivam entitled half share each. If either the said Sadasivam or Palanisamy are not alive at the time of



WEB COPY



A.S.No. 426 of 2018

Palaniammal's death, the heirs of Sadasivam and the heirs of Palanisamy shall take the properties in equal noieties. The said Sadasivam died 45 years back. The said Palaniammal also died 26 years back and after her death, the said Athayee Ammal, wife of Muthusamy is mother of said Sadasivam only heir of Sadasivam entitled half share and the said Palanisamy is entitled to the remaining half share in the said properties. The said Sadasivam died 45 years back without issues leaving his mother Athayee Ammal as his only legal heir. After his death, the said Athayee Ammal and the said Palanisamy partitioned the said properties orally in the year 1975 and as per oral partition northern half share was allotted to Athayee Ammal and southern half share was allotted to Palanisamy and ever since they were in separate possession and enjoyment. The said Athayee Ammal was in long, continuous, absolute possession and enjoyment of her half share and she was the absolute owner of the said property. Except the said Athayee Ammal, no one has got any manner of right, title over her



property including the plaintiffs and defendants. The defendants learnt that the said Athayee Ammal sold her property to one Kasthuri or Irugalur village. Under such circumstances, the said Athayee Ammal and the purchaser Kasthuri are necessary parties to the suit for proper, complete and final adjudication of the case. Hence, the suit is bad for non-joinder of necessary parties.

16. The defendant further submits that the defendants 2 and 3 were the owners of southern half of the said property as per the Wills executed by Palanisamy and Kanagasabapathy and as a coparcener and the defendants 2 and 3 also sold their property for valid consideration to the said Kasthuri to discharge of family debts, educational expenses and other expenses and therefore the said Kasthuri is the absolute owner of the said properties and she is in possession and enjoyment. Except the said Kasthuri, no one has got any manner of right or title over the same including the plaintiffs and defendants.



WEB COPY



A.S.No. 426 of 2018

17. This defendant's grandfather Palanisamy and his son Kanagasabapathy partitioned their properties in the Tamil month of Thai 1977 orally in the presence of village elders and well wishers and ever since they were in separate possession and enjoyment and they sold several properties to third parties.

18. The defendant further submits that the said Palanisamy executed a gift settlement deed in favour of his son Kanagasabapathy by virtue of a settlement deed on 12.09.1978 in respect of his half share in Survey No.156/1 extent 0.50.00; Survey No.156/2 extent 1.52.50 and Survey No.159/2 extent 2.23.00 and handed over possession to his son Kanagasabapathy and ever since he was in possession and enjoyment. After settlement, the said Kanagasabapathy and his sons, the defendants 2 and 3 herein enjoyed the entire lands.

19. The defendant further submits that this defendant's father Kanagasabapathy executed his last Will on 14.09.1998



WEB COPY



A.S.No. 426 of 2018

in favour of his sons, the defendants 2 and 3 herein in a sound state of mind and out of his own volition in the presence of attestors and the same was duly attested by worthy witnesses bequeathing his properties to the defendants 2 and 3 and the same was genuine and natural one. The said Will was duly executed and validly attested by the respectable and natural witnesses and he died on 14.09.1998. After his death, Will came into force and acted upon. The plaintiffs are not entitled to claim any share in the above said properties. The defendants 2 and 3 are absolute owners of the said properties as per the Will and as a coparcener and they are in exclusive possession and enjoyment. Except the defendants 2 and 3, no one has got any manner of right or title over the same including the plaintiffs.

20.....

21.....



22. *The defendant further submits that this defendant's grandfather Palanisamy gounder executed a Will on 05.12.2000 in a sound state of mind out of his own volition and the same was duly attested by the witnesses and the same was genuine and natural one in respect of his property to the defendants 2 and 3. The said Palanisamy died on 15.07.2002 and the said Will came into force and acted upon. The revenue records Patta, Adangal would clearly prove the said Will was acted upon. This defendant and his brother alone paying kist to the Government.*

23.....

24. *The defendant submits that as per the Wills executed by this defendant's father Kanagasabapathi and grandfather Palanisamy and as a coparcener along with their father Kanagasabapathy, the defendants 2 and 3 alone had got right and title over the southern half share of the 1st item of suit property and they sold to Kasthuri and northern half share was sold by the said Athayee Ammal and therefore, the said*



WEB COPY



A.S.No. 426 of 2018

Kasthuri is the absolute owner of 1st item of suit property.

Except the said Kasthuri, no one has got any manner of right or title over the same including the plaintiffs. All original documents including two Wills, settlement deeds and other documents were handed over to the purchaser Kasthuri and she is in possession of the same.”

Thus, the pleadings of the said written statement clearly reveals that these plaintiffs have claimed that they are absolute owners of southern half of suit property as per the Wills executed by Palanisamy, their father and great grandfather Kanagasabapathy and also claimed that there was oral partition held in the family, in which Athayee Ammal/4th defendant was allotted to northern half and other half was allotted to plaintiffs' great grandfather Palanisamy long back. He would further submit that they have sold the southern half portion of the property to 2nd defendant Kasthuri and northern half portion was sold by Athayee Ammal/4th defendant to the said Kasthuri. Now, not only contrary to the said written statement filed in the earlier suit proceedings, but also submits that the plaintiffs came forward with the present suit as if they have obtained title over the property



A.S.No. 426 of 2018

WEB COPY

absolutely by way of gift settlement deed Ex.A2 executed by great grandmother Palaniammal. By their own conduct, they disowned, besides they themselves already admits that there was a oral partition and execution of Wills, which clearly indicates that the alleged gift settlement deed relied on by the plaintiffs. Even assuming that it is true and valid one, it was not acted upon. But the trial court without appreciating the legal proposition as well as the facts on records, erroneously held that the said gift settlement deed Ex.A2 was acted upon, thereby the plaintiffs are the absolute owners of entire suit property and they have sold only half share and remaining half share belongs to them as such is erroneous one and liable to be set aside. Accordingly, the issue nos.2 and 3 are answered.

24. Moreover, the plaintiffs also have not disclosed about the earlier suit proceedings in O.S.No.114 of 2010, which would clearly indicates that plaintiffs approached the court with unclean hands and with ulterior motive filed the vexatious suit. Furthermore, both the plaintiffs are well educated and sailed with the present suit, but claimed that they were not aware of contention of sale deeds Ex.A5 and A6, which were executed by



A.S.No. 426 of 2018

WEB COPY

them in favour of defendants 1 and 2, wherein it is clearly recited that based on the oral partition as well as Will executed by their ancestors, they derived half share in the suit property. But, the trial court failed to appreciate the legal proposition under Sec.92 of Indian Evidence Act clearly barred to adduce oral evidence contra to the written recitals, thereby the decree granted in favour of plaintiffs is liable to be set aside on that ground as such is erroneous one. Accordingly, issue No.4 is answered.

25. In respect of other defendants, they have not appeared before the trial court nor they have adduced any evidence. So, it need not be required any findings against those defendants. Furthermore, it is also revealed that learned counsel D. Rajasekaran, who appeared on behalf of plaintiffs in O.S.No.114 of 2010, wherein these plaintiffs are defendants and the same counsel now appeared for these plaintiffs would clearly indicates that in order to harass the defendants 1 and 2, the present vexatious suit was filed. Accordingly, this Appeal Suit is allowed and the findings rendered by the trial judge in O.S.No. 176 of 2011 is set aside. Suit is dismissed with exemplary cost of Rs.50,000/- (Rupees fifty thousand only) and the same



A.S.No. 426 of 2018

WEB COPY

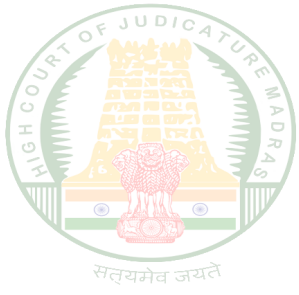
is ordered to be paid by the respondents 1 and 2 to the District Legal Services Authority, Salem. No costs.

27.01.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

I Addl. District Judge,
Salem.



WEB COPY



A.S.No. 426 of 2018

T.V.THAMILSELVI, J.

rpp

A.S.No. 426 of 2018

27.01.2025