



S.A.No.134 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2025

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

S.A.No.134 of 2020

P. Nagarathinam

... Defendant/ Appellant/ Appellant

Vs

Poonkodi @ Ponmozhi

... Plaintiff/ Respondent/ Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, as against the decree and judgment passed in A.S.No.16 of 2014 on the file of IV Additional District and Sessions Court, Coimbatore dated 25.03.2019 confirming the decree and judgment passed in O.S.No.1 of 2012 on the file of the Principal Sub Court, Coimbatore dated 19.12.2013.

For Appellant : Mr. V.K. Vijayaragavan

For Respondent : M/s. P. Saravana Sowmiyan

J U D G M E N T



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This appeal has been filed by the defendant challenging the judgment and decree dated 25.03.2019 in A.S.No.16 of 2014 by the IV Additional District and Sessions Court, Coimbatore, whereby the judgment and decree dated 19.12.2013 passed by the Trial Court in O.S.No.1 of 2012 on the file of the Principal Sub Court, Coimbatore is confirmed.

2. For the purpose of convenience, the parties are herein referred as per their litigative status of the trial Court.

3. The plaintiff filed the suit for permanent injunction against the defendant stating that originally the suit properties belonged to one late Palaniammal, who inherited the same from her husband late Sami Gounder and her pre-deceased son late Maruthamalai Gounder. Subsequently, Palaniammal was in possession and enjoyment of the suit properties has executed a sale deed dated 30.10.1992, alienating the second item of the suit properties in favour of Mrs. Velathal who is the mother of the plaintiff. The Palaniammal had also executed a registered WILL dated 30.12.1987 (Ex.A.15) in favour of the plaintiff's mother. Subsequently plaintiff's mother had settled the item 1, 3 and 4 of the suit properties in favour of the plaintiff. Since her enjoyment has been threatened by the defendant, she come forward



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with the suit for permanent injunction, injuncting the defendant (Appellant herein) from interfering with her possession and enjoyment of suit properties.

4.1. The suit was resisted by the defendant on the ground that the title to the properties shall be traced from one Palani Gounder, who is the great grand father of the defendant. According to the defendant, Palani Gounder along with his four sons were enjoying the suit properties along with other properties and by way of executing Ex.B.1 - Partition deed dated 04.12.1929, a partition was effected among themselves. In Ex.B.1, there is a recital that if any of the shareholder was not having any male heir and died issueless, the property shall devolve on the other co-sharers.

4.2. Consequent to the death of Palani Gounder, his two sons namely Maruthamalai Gounder and Sami Gounder were died issueless and the properties were inherited by the other two surviving share holders namely Ramukutty Gounder and Nanchapa Gounder. Both of them had entered into a partition deed dated 04.04.1957 (Ex.A.9) and they have partitioned the suit properties. Ramukutty Gounder was in possession and enjoyment of the suit properties and other properties allotted to him with his wife namely Palaniammal. After the year 1977, Palaniammal and her husband Ramukutty Gounder died leaving behind the defendant's father Palanisamy as his only



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male heir of the family and after the death of Palanisamy in the year 2003, their properties were inherited by the defendant thereby he alone is having right over the suit properties.

4.3. The defendant further stated that neither Palaniammal nor Velathal have derived any right and title or interest in any part of the estate of Palani Gounder and Nallammal (wife of Palani Gounder) Hence the will dated 30.12.1987 alleged to be executed by Palaniammal in favour of Velathal in respect of the suit properties, is not valid and they are denied as false. Thereby he disputed the right of the plaintiff and contended that he alone is having right over the suit properties.

5. Based on the these pleadings, the Trial Court has framed the following issues and additional issues:

1. Whether the suit properties is in possession of the plaintiff?

2. Whether the plaintiff is entitled for relief of permanent injunction as prayed for?

3. To what relief the plaintiff is entitled?

4. Additional issue: Whether the plaintiff filed suit for bare injunction of declaration of title is maintainable?



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6. Before the Trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined, Exs.A.1 to A.17 were marked. On the side of the defendant, D.W.1 was examined and Exs.B.1 to B.12 were marked. Advocate Commissioner was also examined as C.W.1 and Exs.C.1 and C.2 were marked.

7. After considering the evidences placed on record, the trial Court has decreed the suit and held that there is no dispute raised by the defendant regarding title of the plaintiff. Further the defendant has also not disputed the WILL (Ex.A.15) executed by the Palaniammal in favour of the plaintiff's mother Velathal. Aggrieved over the said findings, the defendant has approached the Appellate Court and the Appellate Court has once again re-appreciated the entire evidences after raising the relevant points for consideration.

8. The Appellate Court has accepted the case of the plaintiff and confirmed the judgement and decree of the trial Court. Aggrieved over the concurrent finding, this second appeal has been filed by the defendant and the following questions of law have been framed, at the time of admission, by this Court.



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“A) Whether the Appellate Court has erred in holding that the suit as framed was maintainable in the absence of declaration of title prayed for by the plaintiff when there was rival claim of title between the parties?

B) When the plaintiff has not filed the original will under Exhibit A.15 dated 30.12.1987 and when no reference was made for its non production in the plaint pleadings, whether the relief granted to the plaintiff on the basis of Exhibit A.15 is tenable?

C) Whether the Appellate Court has erred in accepting the settlement deeds in Exhibits A.1 to A.4 when they were not proved in accordance with law by the plaintiff?”

9. The learned counsel appearing for the defendant/ appellant herein would submitted that the partition deeds were the title deed in respect of the suit properties and this deed specifically contains the recital that if there is no male heir of the co-sharers, then on the death of the co-sharer, the property shall be given back to the other co-sharers. In this case, the Sami Gounder, who is the husband of Palaniammal was died and though it has been pleaded in the plaint that there is no male heir born to them, they had son namely Maruthamalai Gounder; that the Palaniammal had not executed any WILL as stated by the plaintiff and in the absence of WILL, the plaintiff could not claim any right over the suit properties since she is not having any legal right to claim any inheritance. He further submitted that the son of Palaniammal and Sami Gounder namely Maruthamalai Gounder, who died at the age of 12. After his death, the properties have been inherited by



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Palaniammal and after her death, as per Section 15 of the Hindu Successions Act, the properties were inherited by the defendant. He also submitted that though the Trial Court has framed a issue regarding the maintainability of the suit for permanent injunction without seeking declaration, the Trial Court has decided not to decide the issue of title by wrongly presuming that there is no title dispute raised in the suit, hence prays to allow this appeal.

10. Per contra, the learned counsel appearing for the plaintiff/respondent herein submitted that the core issue considered by the both Courts below is, whether Palaniammal is having any right to deal with the properties after the death of her husband, and there is no dispute regarding the validity of the WILL, as raised by the defendant. He further submitted once it has been established that Palaniammal is having a son namely Maruthamalai Gounder, male heir, the conditions stipulated in the partition deed could not be applicable to the facts of this case and the defendant is not entitled to claim any right by way of (Ex.B.1) partition deed dated 04.12.1929. He further submitted that since the WILL was not disputed by the defendant, though there was an attempt to prove the WILL and failure on the part of the plaintiff would not affect the case of the plaintiff. Both Courts below have accepted the evidences placed on record in favour of the plaintiff to show that she has established the title by marking Ex.A.1 to A.5, hence prays to



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dismiss this appeal.

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11. I have considered the submissions made on both sides and perused the records. The admitted case of the both parties are as follows:

12.1 The suit properties and other properties belongs to a family consisting of Palani Gounder and his four sons and they partitioned those properties into five shares by way of a Partition Deed dated 04.12.1929. Subsequently, Palani Gounder and two of his sons were died, hence it necessitated the rearrangement of the family properties between surviving sons namely, one Ramukutty Gounder and Nanjappa Gounder. They have once again partitioned the family properties including the suit properties by way of a partition deed dated 04.04.1957, in which the suit properties were allotted in favour of Ramukutty Gounder and he was in possession and enjoyment of the same. The said Ramukutty Gounder and his wife Palaniammal had a son namely Marudamalai, who had pre-deceased his parents at the age of 12. Subsequently, the properties were under the enjoyment of Ramukutty Gounder and Palaniammal and after the death of Ramukutty Gounder, Palaniammal becomes the absolute owner of the suit properties.



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12.2 According to the plaintiff, Palaniammal sold the second item of the suit schedule property in favour of plaintiff's mother namely Velathal, as per the sale deed dated 30.10.1992. Palaniammal has also executed a WILL dated 30.12.1987 bequeathing the items 1, 3 and 4 of the suit properties in favour of plaintiff's mother Velathal. After the death of the plaintiff's mother, the plaintiff as a sole heir, inherited the same and he is in enjoyment of the same.

12.3 The defendant disputed the right of Palaniammal, who had executed the WILL and also the alienation done by her on the ground that, in the partition deed dated 04.12.1929 - Ex.B.1, there is a recital prescribing a condition that if there is no male descendant to any of the sharers, the shares allotted to them shall be reverted back to the other sharers. The Trial Court considered this point and held that Ramukutty Gounder and Palaniammal had a male child by name Marudamalai, thereby the share allotted to Ramukutty Gounder could not be reverted back to the other sharer. Thereby, the Trial Court has held that after the demise of Ramukutty Gounder, Palaniammal is having right to deal with the suit properties and accordingly held that the plaintiff is having right to enjoy the suit properties, thereby granted injunction as prayed by the plaintiff.



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12.4 The Appellate Court has also once again considered this point on the same aspect and held that, the defendant has failed to establish his semblance of title or interest in the suit properties. Similarly, the defendant has also not disputed the WILL executed by Palaniammal in favour of the plaintiff's mother, hence the defendant is not entitled to interfere with the possession and enjoyment of the properties of the plaintiff.

12.5 On careful perusal of the pleadings made, it reveals that the defendant has disputed the right of Palaniammal to deal with the suit properties on the ground that, Palaniammal and her husband Ramukutty Gounder were not having any male children, thereby the male members of other sharers are entitled to get back the property. However it is admitted during the trial that, Ramukutty Gounder and Palaniammal had a male child, thereby after the death of her child and husband, Palaniammal has inherited the share allotted to her husband namely Ramukutty Gounder, hence both Courts have rendered the finding that Palaniammal is having valid right to deal with the suit properties. Further, in the year 1992 itself, Palaniammal had sold the second item of the suit schedule property to the plaintiff's mother Velathal and the same has been inherited by the plaintiff after the death of his mother, thereby the plaintiff is having absolute right over the second item of the suit schedule property and the defendant has no right to interfere in the



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12.6 As far as other items of the suit schedule properties are concerned, it is the specific case that Palaniammal has executed a WILL in favour of the plaintiff's mother Velathal. Admittedly, the plaintiff's mother is not a relative to Palaniammal and similarly she is not claiming any inheritance. The defendant has categorically disputed the right of Palaniammal to deal with the suit properties and at the same time, he has also pleaded that there is no occasion for executing a WILL by Palaniammal. This does not mean that the defendant has admitted the WILL, whereas he only stated that there is no necessity for executing a WILL by Palaniammal in favour of the plaintiff's mother, it only means that he is disputing the WILL executed by Palaniammal in favour of the plaintiff's mother.

13. It is settled law that once there is a dispute regarding execution of WILL is raised, then the WILL has to be proved as per Section 68 of the Indian Evidence Act and Section 63 of the Hindu Succession Act. The Apex Court in ***Ramesh Verma (dead) through legal representatives Vs. Lajesh Saxena(dead) by legal representatives and another reported in [(2017) 1 Supreme Court Cases 257]***, held that though it is no specific denial of the execution of the will, when the person claims title through the Will, the



burden is on him to prove the Will. The relevant paragraph are extracted hereunder:

“13. A will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.

14. In Savithri v. Karthyayani Amma this Court has held as under: (SCC p.629, para 17)

“17....A will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before it can be accepted as genuine.”

15. It is no necessary for us to delve at length to the facts of



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the matter as also the evidence adduced by the parties before the High Court. Suffice it to note that the execution of the wills has to be proved in accordance with Section 68 of the Evidence Act.”

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14. Admittedly to prove the WILL, P.W.3 (one of the attester) was examined and though he has adduced evidence in favour of the plaintiff by filing the proof affidavit and also after proving the signature and accepting the signature, he has totally given up his entire evidence and he has not supported the execution of the WILL. The purpose of examining the attester in the WILL, to prove proper execution of the WILL, in the absence of any evidence on due execution of the WILL, the WILL could not be received as evidence. Since the plaintiff has relied only on the WILL and on failure of proving the WILL, he cannot claim any right over the items 1, 3 and 4 of the suit schedule properties. Since the plaintiff failed to prove her right in the above said suit schedule properties, the plaintiff is not entitled to relief of injunction against the defendant.

15. As far as the substantial question of law (A) is concerned, the Hon'ble Apex Court in ***Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and Ors. [(2008) 4 SCC 594]*** has laid down guidelines to be followed, in considering the relief of injunction simplicitor, and principles to be followed, if the title to property of the plaintiff is disputed in the injunction



suit and in paragraph Nos.15 to 17 observed as follows:

"15. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari MANU/TN/0271/1965 : AIR1965Mad355 , the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred. On the other hand, in Sulochana Amma v. Narayanan Nair MANU/SC/0047/1994 : 1994ECR195(SC) , this Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premises that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed:

Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction,



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the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata.

This was reiterated in Annaimuthu Thevar v. Alagammal MANU/SC/0416/2005 : AIR2005SC4004.

16. This Court in Sajjadanashin Sayed Md. v. Musa Dadabhai Ummer MANU/SC/0122/2000 : [2000]1SCR1095 , noticed the apparent conflict in the views expressed in Vanagiri and Sulochana Amma and clarified that the two decisions did not express different views, but dealt with two different situations, as explained in Corpus Juris Secundum (Vol.50, para 735, p.229):

Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title.

In Vanagiri, the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in Sulochana Amma that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had



been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when a issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to *res judicata*, but a question whether a finding regarding title could be recorded in a suit for injunction *simpliciter*, in the absence of pleadings and issue relating to title.

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction *simpliciter*.

(b) As a suit for injunction *simpliciter* is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where *de jure* possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (*supra*)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not



investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

16. In this case, the plaintiff claims ownership over the suit schedule properties based on the documents executed by Palaniammal. The defendant claims that Palaniammal has no manner of right to deal with the suit properties, however both Courts below have held that Palaniammal is having right to deal with the suit properties. The matter does not ends here, since the plaintiff relies on the subsequent documents such as sale deed and WILL executed by Palaniammal as discussed in the earlier paragraphs, and the



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defendant not only denied the right of Palaniammal to deal with the suit properties and he has also relied on the partition deed dated 14.12.1929 marked as Ex.B.1.

17. Admittedly, at the time of death of Palaniammal, she was not having any class-I legal heirs. However while making rearrangement regarding the allotment of properties between Palaniammal's husband Ramukutty Gounder and one Samy, the condition which prescribes that if there is no male descendant for any of the co-sharers, the same shall be reverted back to the other co-sharers has not been incorporated. That being so, the subsequent partition taken place alone is applicable to the rights of the parties and not the previous partition deed executed in the year 1929. Hence the defendant's reliance to claim reversion based on the partition deed executed in the year 1929 is not applicable in this case. However both Courts have failed to note that when the WILL was not proved by the plaintiff and only after the death of Palaniammal, her properties shall devolve as per Sections 15 and 16 of the Hindu Succession Act, which reads as follows:

15. General rules of succession in the case of female Hindus.-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the



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husband;

- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

Amendment of section 15.-In the Hindu Succession Act, 1956 (Central Act 30 of 1956), in section 15, after clause (b) of sub-section (2), the following clause shall be inserted, namely:-

“(c)” any property inherited by a female Hindu from her pre-deceased son shall devolve, not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the predeceased son from whom she inherited the property.” [Vide Kerala Act 17 of 2016, sec. 2].

16. Order of succession and manner of distribution among heirs of a female Hindu.- The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:-



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Rule 1.-Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.-If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

18. The Trial court after appreciating the evidence placed on record by both sides, considered the validity of the title claimed by both sides. The evidence adduced in their regard also shows that both adduced evidence knowing fully well about the issues involved in the suit, more particularly, both sides marked their title deeds to support their case. The lower Appellate Court has considered only one point, arisen for determination of the appeal i.e., "whether the plaintiff is entitled for permanent injunction as prayed for", and re-appreciated entire evidence including the issue of title to the suit property, right of parties using or enjoying the suit property. After



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appreciating the title deeds adduced on both sides, such as Exs.A.1 to A.5, Ex.B.1 and Ex.B.9, accepted the case of the plaintiff and rejected the case of the defendant.

19. Admittedly, the defendant herein is the nephew of Palaniammal, whereas the plaintiff is a third party. That being the case, the findings rendered by both Courts below that the suit filed by the plaintiff for permanent injunction simplicitor is maintainable, is not proper. However on careful perusal of the judgment rendered by both Courts below, it reveals that both parties have adduced evidence touching the title of the properties and based on the decision of the Apex Court in *Anathula Sudhakar case* cited supra, since the parties have entered into trial knowing fully well they have to prove the title to the suit properties and their right to deny the other persons claim.

20. Even, if this Court accepts the appellant's contention that there is no issue, relating to declaration of title, omission to frame the issue of declaration of title would not be a valid ground to set aside the declaration of title for the reasons stated hereafter. Admittedly, both sides enter into evidence to prove their right over the suit property, based on their title deeds. They were not mis-directed but focused on proving their title, to reject the



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claim of their opponent. There is no rule of evidence, prohibiting evidence led on one issue shall not be used for arriving decision of another issue. This view is fortified by the two decisions of the Apex Court in ***Bhairab Chandra Nandan Vs. Ranadhir Chandra Dutta [AIR 1988 SC 396]*** and ***Savitri Pandey Vs. Prem Chandra Pandey [AIR 2002 SC 591]***. In ***Bhairab Chandra Nandan's case***, it is observed in the concluding paragraph as that, though formally no issue was framed, the parties went to trial and adduced evidence with regard to an issue in mind and have drawn attention of the Court with regard to another relevant fact, therefore, there is no need for remand the matter once again for reconsideration. In ***Savitri Pandey's case***, even though there was no issue framed, since parties had adduced evidence, the Court is empowered to decide the question of desertion as ground of divorce. Accordingly, the substantial questions of law (A) is answered.

21. This Court at the time of admission has framed substantial questions of law (B), that on the premise that original will was not produced before the trial Court. However on perusal of the records it came to light that the original will has been produced before the Court that being the case, this substantial questions of law (B) framed by this Court, does not arise at all and the same is hereby deleted.



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22. As far as the substantial question of law (C) is concerned, since the plaintiff is a third party and claiming right through a WILL, it is bounden duty of the plaintiff to prove the WILL. Since the WILL has not been proved, deciding the right of the plaintiff based on the settlement deed executed by the plaintiff's mother Velathal is not valid and accordingly, this substantial question of law is answered.

23. In view of the discussions made above, granting injunction against the second item of suit schedule property is hereby confirmed, however the injunction granted against the other items 1, 3 and 4 of the suit schedule property is hereby set aside. Accordingly, this second appeal is partly allowed. No costs.

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Internet : Yes
Index : Yes / No
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To

1. The IV Additional District and Sessions Judge, Coimbatore



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2. The Principal Subordinate Judge, Coimbatore.

3. The Section Officer,
V.R. Section,
High Court of Madras.

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