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SA No. 17 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-10-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 17 of 2020

and

CMP.Nos.477 and 479 of 2020

1. M.DORAISAMY(died)

S/o.Muthusamy Gounder, D.No.1-d,
Padmavathypuram, Avanashi Road,
Tiruppur-3. and 5 Others

2.M.Ramasamy

S/o.Muthusamy, No.19, Ramaya
Colony, Tiruppur-2.

3.P.Kandasamy,

S/o.Palanisamy Gounder,
Koilpalayampudur, Alagumalai Village,
Avanashipalayam Post, Tiruppur Taluk.

4.P.Natarajan

S/o.Palanisamy Gounder, Park Avenue,
Avanashi Road, Tiruppur.

5. SIVAKAMI

W/O. Late Duraisamy,
7/115,Sannathivethi, Ananthakumar
Garden, Thirumuruganpoondi, Avinasi
Tk, Tiruppur Dist

6.Ramesh Kumar

S/O. Late Duraisamy,
7/115,Sannathivethi, Ananthakumar
Garden, Thirumuruganpoondi, Avinasi
Tk, Tiruppur Dist

(A1 died, A5 and 6 brought on record as legal heirs of the deceased A1 vide court order dated 06/04/2022 made in CMP.No.3209 of 2022 in SA.NO.17 of



WEB COPY

Vs

Appellant(s)

1. Mani @ Mohanraj
S/o.Chinnasamy, Arasamarathottam,
Karapalayam, Okkampalayam Post,
Palladam Taluk.
- 2.K.Periaswamy
S/o.Karuupuswamy Gounder, Koduvai
Kattoor Road, Therku
Avanashipalayam, Tiruppur Taluk.
- 3.S.Kothandaraman
S/o.Sami Gounder, 5/148,
Manjapoor Village, Tiruppur Taluk.
- 4.R.Loganathan
S/o.Ramaswamy Gounder, Jalli Medu
Thottam, Ganapathypalayam,
Tiruppur Taluk.

Respondent(s)

PRAYER : Second Appeal filed Under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 28.06.2019 made in AS.No.08 of 2018 on the file of the I Additional District Court, Tiruppur confirming the judgment and decree dated 24.08.2017 made in O.S.No.33 of 2011 on the file of the Principal Subordinate Court, Tiruppur.

For Appellant(s): M.S.Krishnan, Senior Counsel
for M/s. M. Guruprasad

For Respondent(s): Mr.V.Raghavachari,
Senior Counsel
for Mr.R. Asokan For R1 To R4



JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree dated 28.06.2019 made in AS.No.08 of 2018 on the file of the I Additional District Court, Tiruppur confirming the judgment and decree dated 24.08.2017 made in O.S.No.33 of 2011 on the file of the Principal Subordinate Court, Tiruppur.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. The appellants herein are the plaintiffs in O.S. No. 33 of 2011 (originally O.S. No. 75 of 2010), filed against the respondents/defendants seeking partition and division of the suit properties into three equal shares and allotment of two such shares to the plaintiffs, along with other consequential reliefs. The defendants, who are the purchasers of the suit properties from one Natchammal, contested the suit stating that neither the plaintiffs nor their mother had any right or title over the properties. They contended that their vendor, Natchammal, was the absolute owner of the properties and had sold them for valid consideration. They further submitted that ever since their purchase, between the years 2007 and 2009, they have been in possession and enjoyment of the properties, thereby disputing the plaintiffs' claim. After considering the submissions on both sides, the trial court framed issues. Upon



evaluating the oral and documentary evidence, the trial court dismissed the suit, holding that neither the plaintiffs nor their mother had any right or title over the properties. Accordingly, the suit was dismissed. Aggrieved by the said order, the plaintiffs preferred A.S. No. 8 of 2018, wherein the learned first appellate judge also confirmed the findings of the trial court and dismissed the appeal. Challenging these concurrent findings, the plaintiffs have filed the present second appeal.

4. The brief facts of the case:

The suit properties described in the plaint schedule are claimed to be the joint family properties of the plaintiffs. Originally, the properties belonged to the plaintiffs' grandfather, Subbaraya Gounder, who had two wives. Through his first wife, he had two daughters, Nachammal and Palaniammal. After the demise of his first wife, he married again at the age of 71 years and passed away at the age of 72. Through his second wife, he had no issues. The first and second plaintiffs are the sons of Nachammal, and the third and fourth plaintiffs are the sons of Palaniammal. Subbaraya Gounder died in the year 1945, leaving behind his two daughters and his second wife. All of them were in joint possession and enjoyment of the suit properties. After the demise of Subbaraya Gounder's daughters, the plaintiffs succeeded to their respective shares as legal heirs. Thereafter, the plaintiffs and Natchammal were in joint possession of the suit properties, along with other ancestral properties.



5. In the year 1977, they jointly sold a portion of the properties to one Amaravathi Gounder. Subsequently, due to misunderstandings between them, Natchammal, in collusion with the first defendant, created encumbrances over the suit properties with an intention to defraud the plaintiffs' rights. Consequently, the plaintiffs issued a legal notice dated 02.08.2007 to Natchammal, restraining her from creating any encumbrance over the properties. In spite of the said notice, she proceeded to create such encumbrances. Hence, the plaintiffs filed O.S. No. 9 of 2008 against Natchammal. During the pendency of that suit, Natchammal died issueless. Thereafter, the plaintiffs did not press the said suit with an intention to file a fresh suit. In the meantime, the defendants, claiming to be purchasers of the properties, attempted to take possession of them. Therefore, the plaintiffs have filed the present suit seeking partition, claiming 2/3rd share in the suit properties, leaving 1/3rd share to the share of Natchammal.

6. The defendants filed a written statement denying the plaintiffs' right and title over the suit properties. They contended that the plaintiffs were never in joint possession of the properties with Natchammal, though they admitted that both had jointly sold a portion of land in 1977. They further stated that they had sent a reply notice, but the same was not produced before the court. The plaintiffs had purposely withdrawn O.S. No. 9 of 2008, knowing that they would not succeed in that suit. They also contended that after the death of the



first wife, Subbaraya Gounder married Natchammal as his second wife, and the suit properties were his self-acquired properties. During his lifetime, Subbaraya Gounder executed a Will dated 12.03.1945 in favour of Natchammal, and after his demise, she became the absolute owner of the suit properties. She also executed a Will in the year 1958, which was later cancelled in 2007. The entire suit properties remained in her absolute possession, and her name was duly mutated in the revenue records. 7. In the year 1977, the plaintiffs and Natchammal jointly sold land in Survey No. 365/2B, which was not covered under the said Will. The joint patta stood in the name of the plaintiffs' father after the Inam Abolition Settlement proceedings, therefore, the said sale is unrelated to the present suit properties. The defendants alleged that the plaintiffs, with an intention to grab the properties, have filed the present suit based on false claims.

7. On 24.05.2007, Natchammal sold a portion of the properties to the first defendant, who in turn sold them to the second and third defendants on 05.12.2007. On the same day, Natchammal also sold another portion of the properties to the fourth defendant. Hence, as of date, defendants 2 to 4 are in possession and enjoyment of the suit properties in S. No. 228/2, which they claim originally belonged to Natchammal's father and not to Subbaraya Gounder. Thus, the defendants prayed for dismissal of the suit as devoid of merits.



8. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiffs, the first plaintiff was examined as P.W.1, and Exs. A1 to A9 were marked. On the side of the defendants, the third defendant was examined as D.W.1, and two other witnesses were examined as D.W.2 and D.W.3, and Exs. B1 to B20 were marked. Additionally, Exs. X1 and X2 were marked as court exhibits.

9. After considering the oral and documentary evidence, the learned trial judge framed four issues. On analysis of the evidence, the learned judge held that the plaintiffs had failed to establish how the suit properties belonged to Subbaraya Gounder. It was found that Subbaraya Gounder had died in 1945, leaving behind his two daughters (born through the first wife) and his second wife, Natchammal. As there were no male heirs, the properties devolved upon his widow, Natchammal, with limited interest. After the commencement of the Hindu Succession Act, 1956, under Section 14 of the Act, the limited estate held by a Hindu widow became her absolute property. Therefore, Natchammal became the absolute owner of the properties. Consequently, the daughters of Subbaraya Gounder did not acquire any right in the properties, and as their legal heirs, the plaintiffs too have no right, title, or interest in the suit properties.

10. The trial court further held that the revenue records stood in the name of Natchammal, and she had absolute authority to deal with the properties. The



defendants, being purchasers for valid consideration, have acquired lawful title.

The court also accepted the genuineness of the Will executed by Subbaraya Gounder in favour of Natchammal, as D.W.3 identified the signature of the attester, satisfying the requirements of Sections 68 and 69 of the Evidence Act. The document, being more than 30 years old, also attracted the presumption of genuineness under Section 90 of the Evidence Act. Hence, the trial court held that the Will was valid, and the plaintiffs were not entitled to claim any share in the properties. Accordingly, the suit was dismissed.

11. Challenging the said findings, the plaintiffs preferred an appeal before the learned Principal District Judge, Tiruppur, in A.S. No. 8 of 2018. The learned first appellate Judge independently analyzed the facts and evidence, framed separate points for determination, and finally held that the suit properties belonged to Subbaraya Gounder as his self-acquired properties. Through his first wife, he had begotten two daughters. After the demise of his first wife, he married the second wife, Nachammal, and subsequently died in the year 1945, leaving behind his two daughters and his widow, Nachammal. Within five years thereafter, both daughters also passed away.

12. During his lifetime, Subbaraya Gounder had executed a Will in favour of Nachammal. During the trial, the defendants, who were the purchasers of the properties from Nachammal, proved the Will in the manner known to law.



Though the original attesting witnesses were not available, as per the returned summons, Ex.X1 and Ex.X2, one of the witnesses, Subbaraya Gounder (attestor), had died, and the other witness, Ramaswamy, was not residing in the village. A person acquainted with the signature of the attesting witness, Subbaraya Gounder, was examined as D.W.3, thereby proving the Will. Accordingly, the court held that Nachammal became the absolute owner of the properties. The revenue records also stood in her name. As an absolute owner, she had sold the properties to the first and fourth defendants. There was no evidence to show that the plaintiffs were in joint possession of the properties.

13. The appellate court further held that, under Section 14(1) of the Hindu Succession Act, 1956, the two daughters of Subbaraya Gounder had no right to claim any share in the properties. The limited interest enjoyed by the widow, Nachammal, became enlarged into an absolute estate by virtue of Section 14(1) of the Act. Hence, she became the absolute owner and validly sold the properties to the defendants. Accordingly, the plaintiffs had no right or title over the properties, and the appeal was dismissed, confirming the findings of the trial court. Aggrieved by the said concurrent findings, the plaintiffs have filed the present second appeal.

14. The learned counsel for the appellants contended that the courts below had erroneously held that the entire suit properties devolved upon Nachammal



with a limited interest under the Hindu Women's Right to Property Act, 1937, and that such limited interest was enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act, 1956. It was argued that the courts below failed to consider that, on the date of the death of Subbaraya Gounder, his two daughters, born through his first wife, were alive. The learned counsel further submitted that when there was a Will executed by Subbaraya Gounder, the question of enlargement of limited interest under Section 14(1) of the Act would not arise. The courts below had failed to properly appreciate this legal position and erroneously concluded that the widow's limited estate became an absolute estate after the commencement of the 1956 Act. Such a finding, according to the learned counsel, was perverse and contrary to both facts and law.

15. It was further argued that the alleged Will, Exhibit B3, had not been proved in the manner required by Sections 68 and 69 of the Indian Evidence Act. Even D.W.3 had not produced any document containing the signature of the attester, Subbaraya Gounder, to properly identify the signature. Hence, his evidence was not legally acceptable. The courts below, however, had erroneously held that the Will was proved in accordance with law, which finding, the learned counsel submitted, was illegal and liable to be set aside.

16. The learned counsel for the appellant also contended that there was no



evidence before the trial court to show that the testator was in a sound and disposing state of mind when the Will was executed at the advanced age of 71 years. The courts below also failed to consider the fact that the testator was survived by two daughters at that time, yet no share was allotted to them under the Will. Bequeathing the entire property in favour of his second wife, excluding his daughters, created a strong suspicious circumstance surrounding the execution of the Will, which was not properly appreciated by the courts below. Further, it was pointed out that even in the sale deeds executed by Nachammal, there was no reference to the alleged Will, Exhibit B3, which indicated that the Will was never acted upon during her lifetime. Hence, the findings of the courts below were perverse, illegal, and liable to be set aside.

17. Accordingly, the appeal was admitted on 10.03.2020, on the following substantial questions of law:

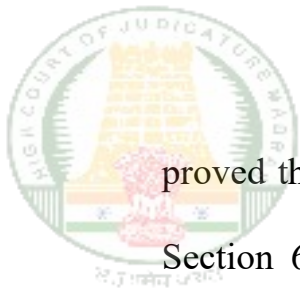
(A) Whether the courts below were right in concluding that the plaintiffs 1 to 4 were not entitled to inherit the properties of their grandfather, since he died in the year 1945, and that the entire property devolved on his widow under the Hindu Women's Right to Property Act, 1937?

(B) Whether the courts below were right in concluding that the Will dated 12.03.1945, said to have been executed by Subbaraya Gounder, had been proved in accordance with law?



18. In reply, the learned counsel for the respondents submitted that the concurrent findings of both the courts below were based on a proper appreciation of facts and evidence, and therefore, no interference was warranted by this Court. He contended that the Will had been proved in the manner required by law and had been rightly accepted by both courts. It was further submitted that, upon the death of Subbaraya Gounder in 1945, as per the Hindu Women's Right to Property Act, 1937, his widow, Nachammal, alone was entitled to the properties with a limited interest, which subsequently became enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act, 1956. Even otherwise, during his lifetime, Subbaraya Gounder had executed a Will in favour of his wife, Exhibit B3, dated 12.03.1945, and after his death, she became the absolute owner of the properties.

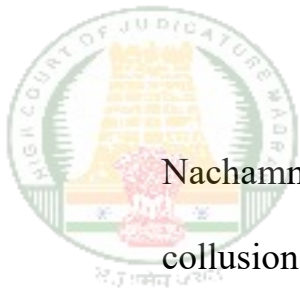
19. It was also argued that Nachammal had been in continuous possession and enjoyment of the suit properties as an absolute owner, and the revenue records were duly mutated in her name. Neither the plaintiffs nor their mother (the daughters of Subbaraya Gounder) were in possession or enjoyment of the suit properties as claimed. Therefore, both the courts below rightly held that Nachammal was the absolute owner, and the sale executed by her in favour of the first and fourth defendants was valid. The learned counsel further submitted that though the Will was not proved through direct witnesses, it was validly



proved through secondary witnesses, D.W.2 and D.W.3, as contemplated under Section 69 of the Evidence Act. Hence, the concurrent findings of both the courts below were proper and required no interference. Accordingly, he prayed for dismissal of the appeal, as no substantial question of law arose for consideration.

20. On consideration of the rival submissions, it is seen that the suit properties originally belonged to Subbaraya Gounder, who had two wives. Through his first wife, Ramathal, he had two daughters, Nachammal and Palaniammal. The plaintiffs 1 to 4 are the sons of the said daughters. After the demise of his first wife, Subbaraya Gounder married his second wife, Nachammal, in 1945 at the age of 71, and he died within six months, at the age of 72. It is undisputed that there were no issues through the second wife.

21. According to the plaintiffs, the suit properties belonged to their grandfather, and at the time of his demise in 1945, he died intestate, leaving behind his two daughters, Nachammal and Palaniammal, and his widow, another Nachammal, as his legal heirs. They were said to have been in joint possession and enjoyment of the suit properties. After the demise of the two daughters, the plaintiffs, as their legal heirs, along with the widow, continued to be in joint possession. In the year 1977, all three jointly sold a portion of the properties to a third party. Subsequently, without the plaintiffs' knowledge,



Nachammal attempted to create encumbrances over the remaining properties in collusion with the first defendant. Hence, the plaintiffs issued a notice and filed a suit in 2008 against Nachammal. However, she died in 2009, and the suit was withdrawn. Thereafter, they filed O.S. No. 33 of 2011, claiming a 2/3rd share in the properties against the defendants, who had purchased the entire properties from Nachammal.

22. The defendants, being purchasers, contended that their vendor, Nachammal, was the absolute owner of the suit properties under the Will, Exhibit B3, dated 12.03.1945, executed by Subbaraya Gounder. It was stated that Subbaraya Gounder died within six months thereafter, and ever since, Nachammal had been in absolute possession and enjoyment of the properties, and the revenue records were mutated in her name.

23. It was also contended that, at the time of the death of Subbaraya Gounder, his daughters were not conferred with any right or title over the suit properties, and that the limited interest of the widow had enlarged into an absolute estate under the Hindu Succession Act, 1956. The defendants relied on Exhibit B3, the Will said to have been executed by Subbaraya Gounder, bequeathing all his properties to his second wife, Nachammal. Within six months of the execution of the Will, he passed away, and she became the



absolute owner.

24. Since the defendants relied upon the Will, the burden was cast upon them to prove its due execution and attestation in accordance with Section 68 of the Evidence Act by examining at least one attesting witness. According to the defendants, they had purchased the properties in 2007 and 2008, and Nachammal died in 2009. They took steps to summon the attesting witnesses to the Will, one Subbaraya Gounder and one Ramaswamy. However, the summons sent to Subbaraya Gounder was returned stating that he had died long back, and the summons sent to Ramaswamy was returned stating that he was not residing in the village. These returned summons were marked as Ex.X1 and Ex.X2 through D.W.2, the Court Amin. Hence, the original attesting witnesses to the Will were not examined before the trial court. Therefore, to prove the Will, the defendants relied upon secondary evidence under Section 69 of the Evidence Act through D.W.3, who claimed to be acquainted with the signature of one of the attestors.

25. The learned counsel for the defendants contended that the Will was proved by examining secondary witnesses as required under Section 69 of the Indian Evidence Act, which applies in the absence of attesting witnesses. The neighbour of the alleged attestor, Subbaraya Gounder, was examined as D.W.3. He stated that he knew the signature of the said attestor and identified the



attestor's signature in Exhibit B3 (the Will). However, although he claimed to have seen the signature of the attestor earlier, he failed to produce any document containing the signature of the attestor to substantiate his identification of the signature in the said Will.

26. In the absence of any supporting documents containing the attestor's signature, mere oral evidence is insufficient to prove the same. Oral testimony regarding the identification of the signature, without corroborating material, cannot be accepted as conclusive proof. However, the courts below failed to appreciate this legal principle and erroneously held that the Will was proved in the manner known to law. Such a finding is illegal and liable to be set aside.

27. In support of his contention, the learned counsel for the appellants relied upon the following decision: ***(2008) 14 SCC 754 : 2008 SCC Online SC 753 (Baby Singh and Others vs. Ram Sahai alias Ram Singh)***, wherein it was held as follows:

“ A. Evidence Act, 1872 – Section 68 – Proof of execution of Will – To prove due execution of a Will, at least one attesting witness is required to be examined, though this does not preclude examining more than one attesting witness. Attestation must conform to Section 3 of the Transfer of Property Act. The requirements of Section 63(1) (c) of the Indian Succession Act, 1925, must also be satisfied. When the genuineness of a Will is questioned, it is the duty of the propounder to dispel any surrounding suspicious circumstances. Where one attesting witness had died and the other was not



examined, and no steps were taken to compel his appearance, it was held that the execution of the Will was not proved.

B. Evidence Act, 1872 – Section 69 – *Applicable only in the absence of attesting witnesses, and only when the party has taken steps to summon such witnesses under Order XVI Rule 10 CPC, and despite such process, the witnesses fail to appear. In such a situation, the handwriting of the attesting witness and the signature of the testator must be proved. Only thereafter does the burden of proof shift.”*

28. Furthermore, the trial court observed that the Will (Exhibit B3) was more than 30 years old and therefore entitled to the presumption under Section 90 of the Evidence Act. This finding is also erroneous because a Will must be proved strictly in accordance with Section 68 of the Evidence Act, and the presumption under Section 90 does not apply to a Will.

29. In this regard, reliance is placed on **(2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934 : 2008 SCC Online SC 1867 (Bharpur Singh and Others vs. Shamsher Singh)**, wherein it was held that:

“A. The presumption under Section 90 regarding documents thirty years old does not apply to Wills. A Will must be proved as per Section 63(c) of the Succession Act and Section 68 of the Evidence Act. If compliance is not possible, Sections 69 and 70 of the Evidence Act may apply as exceptions.

B. The burden lies on the propounder to prove the due execution of the Will, the sound and disposing state of mind of the



testator, and the absence of suspicious circumstances.”

The above ratio is squarely applicable to the present case.

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30. On perusal of Exhibit B3, the Will relied on by the defendants, it is seen that the testator has not assigned any reason for not allotting any share to his daughters born through his first wife, who were alive at that time. The mere recital that sufficient *seervarisai* was given to the daughters is not sufficient, since performing the marriage of daughters is a natural obligation of the father. Moreover, the testator, who was 70 years old and owned vast extents of land, married the said Nachammal at that age but failed to provide any share to his daughters. This circumstance raises serious suspicion regarding the genuineness of the Will.

31. Further, as per the recitals of the Will, the Sub-Registrar visited the house of the testator early in the morning between 7.00 a.m. and 8.00 a.m., and it is also stated that the testator was unable to sign and affixed his thumb impression due to physical inability. This shows that at the time of execution of the Will, the testator was not in good health. If he had been hale and healthy, the beneficiaries ought to have proved it. However, no such evidence was adduced by the defendants before the trial court.



32. The law mandates that for a Will to be valid, the testator must be of sound disposing mind at the time of execution. No evidence was produced by the defendants to establish that the testator was of sound mind at that time. Even D.W.3 did not depose that he saw the testator affixing his thumb impression, nor did he state that the testator was in good health or of sound mind. Therefore, the surrounding circumstances do not inspire confidence and render the Will suspicious. The defendants, being third-party purchasers, are also not aware of the execution of the Will. Hence, through secondary evidence alone, the defendants failed to prove the Will as genuine and valid.

33. The courts below failed to properly appreciate the above facts and evidence. Since there is improper appreciation and the findings are perverse in nature, this Court is empowered to interfere. Accordingly, the findings of the courts below holding that the Will dated 12.03.1945 (Exhibit B3) was proved in accordance with law are set aside. Question of Law No. 2 is thus answered in favour of the appellants.

34. According to the plaintiffs, the suit properties belonged to their grandfather, Subbaraya Gounder. After his demise, his daughters, namely, the mothers of the plaintiffs and their grandmother, Nachammal, were in joint possession and enjoyment of the properties. The defendants contended that some of the properties did not belong to Subbaraya Gounder but to the father of



Nachammal. However, Exhibit B3 itself, relied upon by the defendants, lists all the suit properties as belonging to Subbaraya Gounder, described as his self-acquired and ancestral properties. Even in the sale deeds executed by Nachammal, she did not mention that the properties came to her under a Will, rather, she claimed them as ancestral properties. Therefore, it is evident that the entire suit properties belonged to Subbaraya Gounder.

35. After the demise of Subbaraya Gounder, the revenue records were mutated in the name of Nachammal. However, it is well settled that revenue records are maintained only for fiscal purposes and do not confer title. The defendants contended that after the demise of Subbaraya Gounder, Nachammal alone enjoyed the properties by mortgaging the same. As discussed above, there was no dispute between the parties until 2006. The dispute arose only after the purchase made by the first defendant. Subsequently, the plaintiffs issued notice in 2007 objecting to the said purchase, and thus, the cause of action arose in 2007. Thereafter, they filed O.S. No. 9 of 2008 against Nachammal, which was withdrawn after her death in 2009, and the present suit was filed against the defendants, which is maintainable.

36. According to the defendants, since Subbaraya Gounder died in 1945, his daughters were not entitled to absolute rights in the properties, and only the widow had a limited estate, which became absolute under Section 14(1) of the



Hindu Succession Act, 1956. The courts below accepted this view and held that Nachammal became the absolute owner. However, both courts failed to note that this is not a case of intestate death, as the defendants themselves claimed that Subbaraya Gounder executed a Will (Exhibit B3). Hence, the question of limited interest enlarging into absolute right under Section 14(1) does not arise.

37. It is an admitted fact that at the time of Subbaraya Gounder's death, his two daughters born through his first wife were alive, along with the second wife, Nachammal. Therefore, on his death, the property devolved by inheritance and not by survivorship. The two daughters were equally entitled to shares in the property along with the widow, Nachammal.

38. In this regard, reliance is placed on the decision reported in **(2022) 11 SCC 520**, wherein it was held as follows:

“67. The rights of women in the family to maintenance were in every case very substantial rights and on whole, it would seem that some of the commentators erred in drawing adverse inferences from the vague references to Women's succession in the earlier Smritis. The views of the Mitakshara on the matter are unmistakable. Vijneshwara also nowhere endorses the view that women are incompetent to inherit.

68. Right of a widow or daughter to inherit the self-acquired property or share received in partition of a coparcenary property of



a Hindu male dying intestate is well recognised not only under the old customary Hindu Law but also by various judicial pronouncements and thus, our answer to the questions 1 and 2 are as under:

“If a male Hindu dies intestate, his self-acquired property or the property obtained by partition of a coparcenary property shall devolve by inheritance and not by survivorship. A daughter of such a Hindu is entitled to inherit the property in preference to other collaterals.”

39. The above ratio is squarely applicable to the present case. Therefore, the finding of the courts below that the plaintiffs are not entitled to any share in the suit properties and that the widow, Nachammal, alone was entitled to the entire properties is erroneous.

40. Accordingly, Question of Law (A) is answered in favour of the appellants. The judgments and decrees of the courts below are set aside. The mothers of the plaintiffs, namely Nachammal and Palaniammal, are each entitled to one-third share, and the widow, Nachammal, is entitled to one-third share. Consequently, the suit is decreed as prayed for.

41. It is admitted that the defendants are purchasers of the entire properties from the said Nachammal. However, such sale would not bind the



plaintiffs. The defendants 2 to 4 are entitled only to the one-third share of their vendor, Nachammal, and may work out their remedy for partition of that share during the final decree proceedings. Plaintiffs 1 and 2 are jointly entitled to one-third share, and plaintiffs 3 and 4 are jointly entitled to one-third share.

42. Accordingly, the suit is decreed. Among co-sharers, the relief of permanent injunction does not arise. The suit is decreed for partition, and the plaintiffs are allotted two-third share. The Second Appeal is allowed with costs. Consequently, the connected miscellaneous petitions are closed.

15-10-2025

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

- 1.Mani @ Mohanraj
S/o.Chinnasamy, Arasamarathottam,
Karapalayam, Okkampalayam Post,
Palladam Taluk.
- 2.K.Periaswamy
S/o.Karuupuswamy Gounder, Koduvai
Kattoor Road, Therku
Avanashipalayam, Tiruppur Taluk.
- 3.S.Kothandaraman
S/o.Sami Gounder, 5/148, Manjapoor
Village, Tiruppur Taluk.
- 4.R.Loganathan
S/o.Ramaswamy Gounder, Jalli Medu
Thottam, Ganapathypalayam, Tiruppur
Taluk.
- 5.The I Additional District Court,
Tiruppur.
- 6.The Principal Subordinate Court,
Tiruppur.
- 7.The Section Officer,
VR Section, High Court of Madras.



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T.V.THAMILSELVI J.
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