

SA(MD). No.224 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved On : 26.03.2026

Delivered on : 10.04.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.224 of 2020

1.Periasamy (Died)

2.Ramakkal

Kandasamy (Died)

3.Sethuraman

4.Kathirvel Murugan

5.Kannan

6.Alagammal ... Appellants/Appellants / Defendants

7.Meenakshi

8.J.Jayalakshmi

9.P.Ramar

(A7 to A9 are brought on record as Lrs of deceased
1st appellant vide Court order dated 02.06.2025 made in
CMP(MD)No.3979 of 2025)

Vs.

1.Thangamudi

2.Chellammal ... Respondents/Respondents / Plaintiffs



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PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in A.S.No. 121 of 2017 dated 30.01.2019 on the file of the Subordinate Judge, Tirumangalam, confirming the judgment and decree passed in O.S.No. 313 of 2010 dated 15.12.2012 on the file of the District Munsif, Tirumangalam.

For Appellants : Mr.V.Nagendran

For Respondents : Mr.V.N.Arjun
for Mr.N.Vallinayagam

JUDGMENT

The defendants, aggrieved by the concurrent findings of the trial Court and the first Appellate Court, in a suit for declaration and consequential permanent injunction, have come up by way of the present second appeal.

2. I have heard Mr.V.Nagendran learned counsel for the appellants/defendants and Mr.V.N.Arjun, learned counsel for Mr.N.Vallinayagam learned counsel for the respondent / plaintiff.



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3. The above second appeal has been admitted on 20.03.2020 on the following substantial question of law:

(i) Whether the lower and lower Appellate Courts are having jurisdiction to try the suit in the absence of the necessary and proper parties?

(ii) Whether the applicability of Section 43 of the Transfer of Property is correct in law?

4. In fact, at the outset, Mr.V.Nagendran, learned counsel for the appellants, has suggested further additional substantial questions of law, which are as follows:

1. Whether the judgments of trial Court and lower Appellate Court in the above case is not affected by Section 14(1) of Hindu Succession Act?

2. Whether the judgment of trial Court and lower Appellate Court is not affected by the common judgment passed in the previous suits O.S.No.731 of 2004 and O.S.No.209 of 2002 dated 05.11.2007 passed by the District Munsif of Tirumangalam, Madurai District?



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3. While the Contract of transfer between the respondents and the vendor Velammal is not subsisting as per the common judgment dated 05.11.2007 passed in O.S.No.731 of 2004 and O.S.No. 209 of 2002 on the file of the District Munsif of Tirumangalam, whether the decree and judgment of the trial Court and lower Appellate Court in the above case is legally sustainable?

5. Insofar as the first suggested question of law, I find that it is not the case of the appellants either before the trial Court or before the first Appellate Court that Section 14 of the Hindu Succession Act would apply and there is also no pleadings in this regard in the written statement.

6. In such circumstances, I am unable to frame the first suggested substantial question of law. Substantial question of law 2 and 3, which are suggested are more or less one and the same and finding it relevant and necessary to be decided, I framed the following additional substantial



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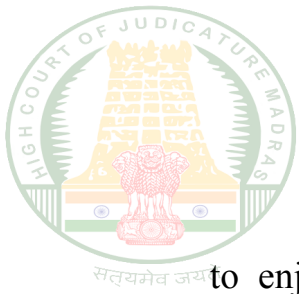
question of law:-

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1. Whether the judgment of the trial Court as well as the lower Appellate Court is not affected by the common judgment passed in the previous suits in O.S.No.731 of 2004 and O.S.No.209 of 2002 dated 05.11.2007 on the file of the District Munsif, Tirumangalam, Madurai District?

7. Brief facts, that are necessary for decided the instant Second Appeal, are as hereunder:

One Nallalagu Thevar was admittedly the owner of the property. He had two wives, viz., Chellakkal and Petchiammal. Second wife, viz., Petchiammal had no issues. Through the first wife, viz., Chellakkal, Nallalagu Thevar was blessed with a daughter, viz., Velammal. Velammal was in turn blessed with two daughters, viz., Chellammal and Ramakkal and two sons, viz., Kandasamy and Sethuram. The said Nallalagu Thevar, in and by a settlement deed dated 21.06.1973, settled the suit property in favour of his daughter Velammal, through his first wife/Chellakkal with a condition that his second wife/Petchiammal had

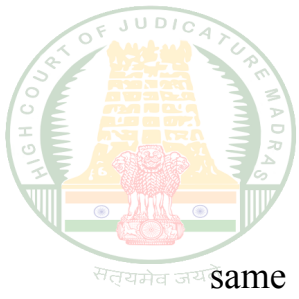


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to enjoy the properties during her life time. During the life time of Petchiammal, Velammal sold the properties vide a registered sale deed dated 09.05.2003, in favour of her daughter/Chellammal and Chellammal's husband, Thangamudi, who are the plaintiffs before the trial Court.

8. The son-in-law of Velammal, that is the husband of Ramakkal, viz., Periasamy, has been arrayed as first defendant, Ramakkal herself arrayed as second defendant and two sons of Velammal viz., Kandasamy and Sethuram are arrayed as defendants 3 and 4. The third defendant passed away pending proceedings and his legal heirs, viz., Kathirvelmurugan, Kannan and Alagammal, were also impleaded as defendants. The plaintiffs contending that though Petchiammal was given a life interest in respect of the suit property, on her death, the properties devolved upon the plaintiffs by virtue of the sale deed dated 09.05.2003. The plaintiffs claimed the benefit of Section 43 of the Transfer of Property Act. According to the plaintiffs, when they attempted for mutation of revenue records, the defendants objected to the



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same and also attempted to interfere with the possession and enjoyment of the property. Hence, they filed the suit for declaration of title and permanent injunction.

9. The suit was resisted by the defendants, who are the appellants herein, contending that Petchiammal was given an unquestioned power to enjoy the suit schedule property till her life time and therefore, the alienation by Velammal on 09.05.2003, during life time of Petchiammal, was not proper or permissible under law. The defendants refer to a common judgment passed in O.S.No.209 of 2002 and 731 of 2004 on the file of the District Munsif, Tirumangalam by judgment dated 05.11.2007, where the rights of Petchiammal have been upheld. Petchiammal died much later on 09.02.2010 alone and therefore, Velammal's right to enjoy the suit property arose only after the death of Petchiammal, ie. On 09.02.2010. It is therefore contended that the sale deed executed during the life time of Petchiammal, on 09.05.2003 is inoperative and cannot be valid. The defendants claim that they are also entitled to a share in the suit property, being the natural heirs of Velammal.



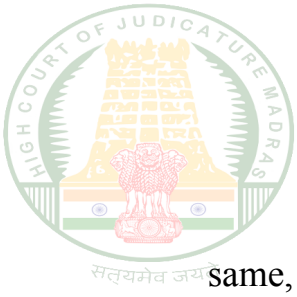
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10. After trial, the trial Court decreed the suit. As against the same, the defendants challenging the verdict of the trial Court in O.S.No. 313 of 2010 filed an appeal in A.S.No.121 of 2017 and the first Appellate Court also dismissed the appeal, by confirming the decree in O.S.No.313 of 2010. As against the concurrent findings, the defendants are before this Court.

11. Arguments of the learned counsel for appellants:

11.1. Mr.V.Nagendran, learned counsel for the appellants would refer to the common judgment dated 05.11.2007 in O.S.No.209 of 2002 and 731 of 2004 on the file of the District Munsif, Tirumangalam, and contend that Petchiammal, second wife herself had moved the Court to validate her life interest in the suit property and questioning the sale in Velammal during the life time. He would further state that the trial Court accepted the case of Petchiammal, second wife and decreed the suit in O.S.No.731 of 2004 filed by Petchiammal and dismissed the suit filed by Velammal against Petchiammal in O.S.No.209 of 2002. Challenging the



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same, Velammal filed an appeal in A.S.No.164 of 2007 against the judgment of the trial Court and the appeal came to be dismissed on 18.09.2008.

11.2. Mr.V.Nagendran, learned counsel for the appellants, therefore, would rely on Section 43 of the Transfer of Property Act, contending that both the trial Court and the First Appellate Court correctly recognized and accepted the alienation of the property and in such circumstances, there was no contract which is subsisting which is a fundamental requirement of Section 43 of the Transfer of Property Act. The learned counsel would contend that the plaintiffs cannot contend that on the demise of Petchiammal, the property would stand vested with the plaintiffs. The learned counsel would further state that the purchasers are not strangers to the transaction, but are, in fact, the daughter and son-in-law of Velammal and therefore, they cannot even be *bonafide* purchasers. The learned counsel took me through the settlement deed executed by Nallalagu Thevar on 21.06.1973 to highlight the rights conferred on the second wife Petchiammal.



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11.3. Mr.V.Nagendran, learned counsel would further contend that a limited right was conferred upon the second wife, Petchiammal, solely for the purpose of maintenance, and therefore, the provisions relating to the wife under the Hindu Succession Act would apply. Consequently, according to him, such limited right would blossom in accordance with Section 14 of the Hindu Succession Act. He would therefore contend that while that being the positive, Velammal cannot claim any right in her individual capacity under the settlement deed dated 21.06.1973 and her legal heirs, viz., the plaintiffs and the defendants would be entitled to an equal share in the estate of Petchiammal. In this regard, Mr.V.Nagendran, learned counsel also relied on the decision of this Court in ***Rajeswari V. Murugesan*** reported in ***2021-5-CTC-698***. He has also relied on the decision of this Court in ***Gnanasekaran V. Balasubramanian and others*** reported in ***2023-2-CTC-304***, in support of the submission. His primordial argument is that if the contract does not subsist, then Section 43 of the Transfer of Property Act, will not apply.



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12. Arguments of the learned counsel for respondents:

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12.1. Per contra, Mr.V.N.Arjun, learned counsel for the respondents / plaintiffs would firstly contend that the plea of Section 14(1) of the Hindu Succession Act being applicable has not even being taken in the written statement or at any point during trial and also before the first Appellate Court. He would therefore state that the said issue cannot be raised for the first time in the second appeal.

12.2. As regards the applicability of Section 43 of the Transfer of Property Act, the learned counsel relied on the decision of the Hon'ble Supreme Court in *Jote Singh (Dead) v. Ram Das Mahto* reported in **1996-5-SCC-524**, where the Hon'ble Supreme Court held that a person, who sells the property not being the owner on the date of sale, becomes the owner subsequently, he is duty bound to make out the sale to the purchaser when a person initially had no title but later acquired an interest, Sections 41 and 43 of the Transfer of Property Act do not apply to involuntary transfers, such as those executed through a Court auction, and do not cover voluntary transfers that are irregular or invalid. The



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learned counsel would therefore state that the Courts below have rightly interpreted Ex.A1 document as well as the common judgment in the two connected suits and decreed the suit, finding the plaintiffs to be entitled to the reliefs prayed for. He would pray for the second appeal to be dismissed.

13. I have carefully considered the submissions advanced by the learned counsel on either side.

Discussion:

14. As already stated herein above, the applicability of Section 14(1) of the Hindu Succession Act is taken up for the first time in the present second appeal and there being no pleading or any evidence relating to the same, I do not deem it proper or necessary to deal with the said issue in the present second appeal.



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15. The only question that remains to be answered is whether Section 43 of the Transfer of Property Act would apply to the facts of the present case.

16. Section 43 of the Transfer of Property Act, is usefully extracted hereunder:

43. Transfer by unauthorised person who subsequently acquires interest in property transferred.-

Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.



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17. It is the contention of Mr.V.Nagendran, learned counsel for the appellants that since the contract is not subsisting in view of the common judgment passed in O.S.No.209 of 2002 and O.S.No.731 of 2004 on the file of the District Munsif, Tirumangalam, the plaintiffs cannot take advantage of benefit of provisions of Section 43 of the Transfer of Property Act. Section 43 of TP Act, to apply, as seen from the above extract, the following principle conditions have to be satisfied:

(i). The contract should have been made by a person competent to contract, and

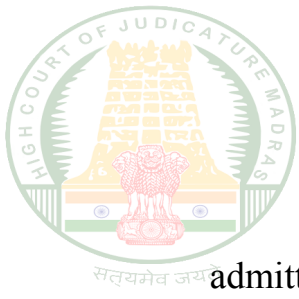
(ii) it must still be in force when the claim for recovery of the property is made. It is argued by Mr.V.Nagendran, that in view of Petchiammal's heirs filing the suit in O.S.No.731 of 2004 against Velammal also succeeding before the trial Court and first Appellate Court and once the matter has attained finality, the contract cannot be said to be subsisting; and consequently, the sale deed executed by her daughter and son-in-law cannot be relied upon by the plaintiffs to claim any benefit.



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19. The common judgment and decree in O.S.No.209 of 2002 and O.S.No.731 of 2004 on the file of the District Munsif, Tirumangalam, is available by way of an additional typed set filed by the appellants. As the case of Petchiammal, second wife, was only that under the settlement deed dated 21.06.1973, Nallalagu Thevar along with Petchiammal had settled the property on Velammal, retaining a life interest for Nallalagu Thevar as well as Petchiammal and therefore, the first defendant will get power of alienation only after the death of both Nallalagu Thevar and the plaintiffs. The relief sought by Petchiammal in her suit was limited to a declaration that she was entitled to possession during her lifetime, along with a consequential permanent injunction restraining Velammal and the plaintiffs in the present proceedings from interfering with her possession and the enjoyment. The trial Court finding that Velammal had admitted the possession and enjoyment of suit property by Petchiammal as a life estate holder, decreed the suit of Petchiammal and dismissed the suit filed by Velammal. The first Appellate Court affirmed the findings of the trial Court. Both the Courts have proceeded on the basis of the



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admitted possession and enjoyment of the suit property by Petchiammal and there is no issue or finding invalidating the sale deed dated 09.05.2003 by Vellammal in favour of the plaintiffs herein. Both the Courts have not held that the sale deed dated 09.05.2003 executed by Velammal to be either null and void or not binding on Petchiammal. In such circumstances, I do not see how Section 43 of TP Act cannot be invoked by the plaintiffs. Petchiammal admitted the factum of sale by Velammal. Her grievance appears to be limited to a concern that the sale may affect her right to use and enjoy the suit property. Accordingly, the relief sought was framed to safeguard her rights during her lifetime. The prayer was not challenging the execution of the sale deed by Velammal in favor of the plaintiffs. In such circumstances, I am unable to accept the argument of Mr.V.Nagendran, learned counsel for the appellants that the contract was not subsisting and therefore Section 43 of the Transfer of Property Act will not apply.



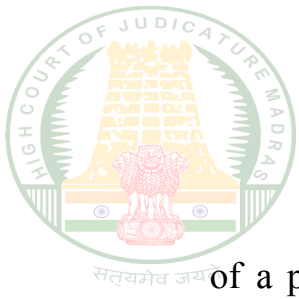
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20. The decision that had been relied on in **Gnanasekaran's** case will not apply to the facts of the present case, since in the said suit, the sale deed executed was declared to be null and void and therefore, this Court held that there is no contract subsisting for claiming benefit under Section 43 of TP Act.

21. In the light of the above, I do not see any error committed by the trial Court as well as the first Appellate Court, in granting relief to the respondents plaintiffs, warranting interference under Section 100 of the Code of Civil Procedure.

22. The decision in **Rajeswari's** case, that has been relied on by Mr.V.Nagendran, learned counsel for the appellants for projecting an argument, though for the first time in the second appeal, that by virtue of Section 14(1) of the Hindu Succession Act. Petchiammal's limited right would ripen into an absolute right, and any alienation by Velammal would, therefore, be invalid in law. As already discussed, in the absence



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of a plea or supporting evidence specifically addressing Section 14(1),

I am unable to apply the ratio laid down in the ***Rajeswari's*** case to the present facts. Even for purely academic purposes, I do not find that Section 14(1) can be pressed into service in the present case. Explanation to 14(1) of the Hindu Succession Act clearly states that “property” includes 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 prescription, or in any other manner whatsoever, and also any such property held by her as sridhana immediately before the commencement of the Act. Thus, Section 14(1) of the Hindu Succession Act can be applied to enlarge a limited estate in an absolute estate, the right bestowed as female Hindu prior to the commencement of the Hindu Succession Act, 1956, in the present case, admittedly, Petchiammal was given the limited enjoyment of rights only in 21.06.1973, which is after the commencement of Hindu Succession Act and in view of the explanation to Section 14(1) of the Hindu



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Succession Act, I am unable to countenance the line of argument of Mr.V.Nagendran.

23. For all the above reasons, I do not see any merit in the second appeal and the substantial question of law are answered against the appellants in favour of the respondents.

24. In fine, this Second Appeal is dismissed. However, there shall be no order as to costs.

10.04.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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TO

1. The Subordinate Judge,
Tirumangalam
2. The District Munsif,
Tirumangalam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

LS

**Pre-delivery Judgment made in
SA(MD) No.224 of 2020**

10.04.2026