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**(1992) 12 MAD CK 0030**  
**In the Madras High Court**

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|-----------------------------------------|------------|
| Ayyamperumal Chettiar (died) and Others | APPELLANT  |
| Vs                                      |            |
| Manivel Chettiar and Others             | RESPONDENT |

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**Date of Decision :** 15-12-1992

**Acts Referred:**

Hindu Succession Act, 1956 — Section 14

**Citation :** (1993) 1 MLJ 421

**Hon'ble Judges :** Abdul Hadi, J

**Bench :** Division Bench

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## Judgement

Abdul Hadi, J.—The 2nd defendant is the appellant in this second appeal against the concurrent decree given by the courts below, declaring the title of the plaintiff 1st respondent to the suit property and granting consequential injunction. Pending appeal, the appellant died and his legal representatives were brought on record as appellants 2 to 8 likewise. The 2nd respondent also died and his legal representatives were brought on records as respondents 3 to 6.

2. The suit property is a vacant site of about 5 cents. It originally belonged to Velayutham Chettiar and Subramania Chettiar was his son through the first wife and the 1st defendant who is the 2nd respondent herein and the 2nd defendant-appellant are the sons of the said Velayutham Chettiar through his second wife. In the family partition Ex.A-11, dated 28.8.1920 the suit property was allotted to the said Subramanian Chettiar. On his death in about 1927, Subramania Chettiar's wife Velayi Ammal enjoyed the said property. There are three daughters to the said Subramania Chettiar and Velayi Ammal. After the death of Subramania Chettiar, the said Velayi Ammal and her three daughters sold away the suit property under Ex.B-24, dated 9.10.1939 to one Ponnusami Muthiraian. There was also a rectification deed Ex.B-25, dated 24.10.1939, making some rectification relating to the description of the property found in Ex.B-24. The first defendant filed O.S. No. 45 of 1943 against the Velayi Ammal and the abovesaid Ponnusami Muthiraian, the vendee under Ex.B-24 for a declaration of his title to the suit property and the property just north of it, described as ABHE property in

that suit. Apart from the said declaration, possession was also sought for in the said suit. The said suit ended in a compromise and as per the compromise, the 1st defendant who was the plaintiff in the suit got a decree only in respect of the said property ABHE, which lay just north of the suit property. The said decree in the said suit is Ex.A-2, dated 17.7.1944. However, on 4.9.1944, the same. 1st defendant herein filed another suit O.S. No. 506 of 1944 against the same Ponnusami Muthiraian and Velayi Ammal and also against all the three daughters of Velayi Ammal (one of whom is Nacharammal, who is P.W. 2 in this suit). This suit is for a declaration that the abovesaid Ex.B-24 and Ex.B-25 deeds are not binding on the 1st defendant in this suit and other reversioners of the abovesaid deceased Subramania Chettiar. The said suit was decreed as prayed for as borne out by Ex.A-8, dated 24.1.1947. The abovesaid Velayi Ammal died in 1959.

3. Now according to the plaintiff, after the death of Velayi Ammal, her abovesaid three daughters enjoyed the suit property and sold it to the plaintiff under Ex.A-3, dated 11.4.1977 and the plaintiff is in possession of the same by putting up a thatched house in it, but, the defendants are obstructing his enjoyment.

4. The 1st defendant remained ex parte.

5. The defence of the 2nd defendant is Velayi Ammal was not enjoying the suit property till her life time and under Ex.B-24 Ponnusami Muthiraian alone was in possession; Velayi Ammal was not entitled to any legal possession on the date of Hindu Succession Act of 1956. Therefore, on her death, her daughters have not inherited the same. The defendants alone are entitled to the suit property as reversioners to late Subramanian Chettiar. After Ex.A-8 decree, Ponnusami Muthiraian had handed over possession of the suit property to the defendants. The defendants have partitioned the suit property in the year 1960 in two equal parts and are in possession of their respective shares.

6. Both the Courts have held that the limited estate enjoyed by Velayi Ammal enlarged into an absolute estate by virtue of Section 14 of the Hindu Succession Act and that hence when Velayi Ammal died, her abovesaid three daughters inherited the suit property from her and consequently Ex.A-3 sale deed in favour of the plaintiff was valid.

7. The learned Counsel for the appellants no doubt initially contended that there was no plea regarding the application of Section 14 of the Hindu Succession Act, resulting in enlargement of Velayi Ammal's interest in the suit property into an absolute interest. But, I find that there is plea that Velayi Ammal enjoyed the suit property till her life time and thereafter, the suit property was inherited by her daughters. This shows that there is plea that she had absolute interest in the suit property, on her death. (There is evidence to show that she died in 1959). However, there is no explicit plea in the plaint regarding the applicability of Section 14 of the Hindu Succession Act. But, in the written statement there is a specific plea as follows:

The said Velayi Ammal was not possessed of the suit property nor she was

entitled to any legal possession on the date of Hindu Succession Act of 1956. Therefore on her death, her daughters have not inherited the same.

This shows that the claim u/s 14 of the Hindu Succession Act has been repudiated by the defendants. Further, I find from the judgment of the Courts below that both the parties proceeded in the trial that the said question regarding the applicability of Section 14 is a question to be decided in the suit. Therefore, I do not think that it can be said that Section 14 cannot be invoked by the plaintiff in this proceedings simply on the ground of imperfection in the actual plea raised by the plaintiff.

8. Then, it has to be seen whether Velayi Ammal's interest actually enlarged into an absolute interest in the suit property pursuant to the abovesaid Section 14. In this connection, the learned Counsel for the appellants argues that since Subramania Chettiar died in 1927 itself, even prior to the commencement of the Hindu Women's Right to Property Act, 1937, and since Velayi Ammal had also sold away the suit property under Ex.B-24, she cannot be said to be legally possessed of the suit property in 1956 when the Hindu Succession Act came into force and that, therefore, there is no scope for application of Section 14 of the Hindu Succession Act. This submission has to be accepted; first of all, since Subramania Chettiar died in 1927, Velayi Ammal did not get the widow's estate spoken to in the above said Hindu Women's Right to Property Act, 1937. Further as per Ex.B-24, she had sold away her interest in the suit property and it cannot also be said that by Ex.A-8 decree, the sale under Ex.B-24 has actually been set aside. What actually has been held in Ex.A-8 decree is that Ex.B-24 sale is not binding on the reversioners, who are the defendants 1 and 2. But obviously, that does not mean that Ex.B-24 does not bind Velayi Ammal. In other words, Velayi Ammal is bound by Ex.B-24. Then the question is when she had parted away her interest in 1939 itself under Ex.B-24, can she claim the benefit of Section 14 of the Hindu Succession Act, when it came into force in 1956? No doubt, the learned Counsel for the 1st respondent-plaintiff seeks to rely on Ex.A-2 - decree and contends that by virtue of the said decree, the 1st defendant, who was the plaintiff in that suit recognised the title of Velayi Ammal and the abovesaid Ponnusami Muthiraian who were defendants in that suit, over the suit property. But, this submission of the learned Counsel for the 1st respondent has no force since, immediately after the decree in O.S. No. 45 of 1943, dated 17.7.1944, the 1st defendant filed the abovesaid suit O.S. No. 506 of 1944 on 4.9.1944 and obtained the decree that Ex.B-24 and Ex.B-25 sale deeds would not bind himself and the other reversioners to Subramania Chettiar. Therefore, I am of the view that Section 14 of the Hindu Succession Act will not have any operation in the present case and that, therefore, her abovesaid daughters could not have inherited the suit property and that, therefore, their alleged sale of the suit property under Ex.A-3 in favour of the plaintiff is not valid.

9. For Section 14 to operate, the Hindu woman concerned should have been legally possessed of the property in question on the date when Hindu Succession

Act came into force. It has also been held by the Supreme Court in Mangal Singh v. Rattno AIR 1967 S.C. 1786, that the expression "possessed by" in Section 14(1) is not intended to apply to a case of mere possession without title. Further in Meenakshisundaram and Others Vs. Srinivasaga Reddiar (died) and Others, , it has been held that where a widow had parted with title to the property by executing a sale deed before the coming into force of the Hindu Succession Act, but continued to be in possession of the same, she must be taken to have been in wrongful possession or at any rate, to be in possession without rightful basis or title therefore and that to such a case, Section 14(1) will have no application. In the present case also, Velayi Ammal had already sold the property under Ex.B-24 and Ex.B-25 and she cannot be held to be legally possessed of the suit property on the date of the commencement of the Hindu Succession Act.

10. No doubt, the learned Counsel for the 1st respondent-plaintiff relies on the boundary recital in Ex.A-12 partition deed dated 10.5.1960, saying about Velayi Ammal's life interest. The said Counsel also points out the observation of the lower appellate Court based on Ex.A-12 stating that from the said document, it is clear that the property continued to be in the possession and enjoyment of Velayi Ammal. But, I do not think that from the abovesaid recital, the possession of the suit property by Velayi Ammal in 1960 is admitted by the defendants. That apart, even assuming that there is such an admission, Velayi Ammal's possession cannot be considered as legal possession as contemplated in Section 14 of the Hindu Succession Act since she already sold away her interest long back in 1939 under Ex.B-24, and Ex.B-24. For the same reason, Exs.A-10, A-5, A-6 and A-7 voters" list, which are dated 1970 and thereafter, will be of no use to the plaintiff.

11. Therefore, the courts below have erred in holding that Section 14 of the Hindu Succession Act applies in the present case. Therefore, the abovesaid daughters, the vendors of the plaintiff, had no title when they executed Ex.A-3 in favour of the plaintiff. Therefore, the plaintiffs suit has to be dismissed and this second appeal has to be allowed.

12. Accordingly, the judgments and decrees of the Courts below are set aside and the suit is dismissed and this second appeal is allowed. However, in the circumstances of the case, there will be no order as to costs.