
(2000) 06 MAD CK 0001
In the Madras High Court
Case No : S.A. No. 1547 of 1988

Kuthalakannu Ammal and Another APPELLANT
Vs
Lakshmana Nadar and Others RESPONDENT

Date of Decision : 09-06-2000

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1)

Citation : AIR 2001 Mad 320

Hon'ble Judges : I. David Christian, J

Bench : Single Bench

Advocate : Uma Venkataraman, for the Appellant; M.V. Venkateseshan, for the Respondent

Final Decision : Dismissed

Judgement

I. David Christian, J.—Appeal against the judgment and decree made in A.S. No. 71 of 1983, on the file of the Subordinate Judge, Tenkasi

confirming the decree of dismissal made in O.S. No. 33 of 1980, on the file of the District Munsif, Tenkasi dated 28-2-1983.

2. The unsuccessful plaintiffs in both the Courts below are the appellants in this Second Appeal.

3. The plaintiffs filed the suit praying for partition and separate possession of their half share in the suit property alleging that the suit property

originally belonged to one Mahalinga Nadar, that Mahalinga Nadar died about 1940 leaving behind his wife Nallamuthu Ammal and two sons,

Subramania Nadar and Madasamy Nadar, that they have been enjoying the properties, that on 5-4-1954 there was an oral partition between two

sons and Mahalinga Nadar as per which the suit properties were allotted to their mother Nallamuthu Ammal for her maintenance, that Nallamuthu

Ammal was given only right to enjoy the property during her lifetime that after her lifetime, the properties are to devolve upon among two sons

equally that Madasamy died in 1960 leaving behind his wife, the first plaintiff, a daughter the second plaintiff as his legal heirs, that Subramania

Nadar died in 1972 leaving behind the defendants 1 and 2 his sons and the third defendant his wife, that Nallamuthu Ammal was enjoying the

properties during her lifetime, that she died in 1979, that therefore the plaintiffs and the defendants are each entitled to half share in the suit

properties, that the plaintiffs have been demanding the defendants to divide the properties and allot their separate share, that a notice was issued by

the plaintiffs for which a reply has been sent with false averments, that the defendants have claimed that the suit properties have been gifted in their

favour by Nallamuthu Ammal Under a deed dated 1-8-1968, that Nallamuthu Ammal had no right to execute the gift deed, that she had only right

to enjoy the suit property till her lifetime, that therefore, the gift deed executed in favour of the defendants is not valid, that the gift deed did not

come into effect, that the plaintiffs and the defendants continue to be in joint possession of the properties and that, therefore, the suit has been filed

for partition and separate possession of the plaintiffs' half share.

4. The suit was resisted by the defendants who filed a written statement contending that the relationship stated in the plaint is true, that it is not true

to say that in the oral partition Nallamuthuammal was allotted suit properties only for enjoying the same during her lifetime for her maintenance, that

Nallamuthuammal has absolute right in the suit properties, that she was enjoying the properties as the absolute owner, that while so, on 1-8-1968

Nallamuthuammal has executed a gift deed in respect of the suit properties in favour of the defendants 1 and 2 who are her grandsons through her

son, that the gift deed was executed in favour of these defendants out of true love and affection, that the defendants 1 and 2 have also taken

possession of the properties and have been enjoying the same as the absolute owners, that patta has been also changed in the name of the

defendants 1 and 2, that the defendants 1 and 2 have been paying kist, that it is false to state that the suit properties were given to

Nallamuthuammal only for her maintenance, that even assuming for a moment that the properties were given to Nallamuthuammal as against her

maintenance rights, she became absolute owner by virtue of Section 14(1) of the Hindu Seccession Act, 1956, that the gift has been accepted and

acted upon and that, therefore, the plaintiffs are not entitled to any share and that the suit is liable to be dismissed.

5. On the above pleadings, the learned District Murisif has framed issues as to whether Nallamuthuammal had absolute right in the suit property or

she was only given a right to enj oy the property during her lifetime, whether the gift deed executed by Nallamuthuammal in favour of the

defendants 1 and 2 is true and valid, whether it was acted upon and followed by possession and whether the plaintiffs are entitled to any share. On

behalf of the plaintiffs, P.W. 1, the brother of the first plaintiff was examined, and through him Exs. A-1 to A-5 documents have been marked. The

first defendant examined himself as D.W. 1 and through him Exs. B-1 to B-12 documents were filed.

6. On consideration of the evidence, oral and documentary; the learned District Munsif held that Nallamuthuammal was allotted the suit properties

as against her maintenance in the year 1954, that subsequent to coming into effect of Hindu Succesion Act. 1956 her limited estate blossomed into

absolute right, that therefore, she was competent to execute gift deed in favour of her grandsons, the defendants 1 and 2, that the gift deed has

been acted upon and possession has been taken by the defendants 1 and 2, that revenue records have been also changed in their names, that the

defendants 1 and 2 are the absolute owners in respect of the suit properties and therefore dismissed the claim of the plaintiffs for a share in the suit

properties.

7. Aggrieved at the said judgment and decree, the plaintiffs preferred A.S. No. 71 of 1983, on the file of the Subordinate Judge, Tenkasi. Learned

Subordinate Judge by the impugned judgment dated 3-12-1986 confirmed the decree granted by the trial court and dismissed the appeal.

8. As against this judgment and decree, the plaintiffs have preferred this second Appeal.

9. At the time of admission of this second appeal, the following substantial question of law has been formulated for consideration :--

Whether the courts below have properly appreciated the provisions of Section 14 of the Hindu Succession Act in dismissing the Suit ?

10. The point :--

The plaintiffs 1 and 2 have filed the suit for partition and separate possession claiming half share in the suit properties as legal heirs of late

Madasamy Nadar. It is not in dispute that the suit properties originally belonged to one Mahalinga Nadar, who died leaving behind his wife

Nallamuthu-ammal and two sons Subramania Nadar and Madasamy Nadar. Madasamy Nadar died in the year 1960 and Subramania Nadar died

in 1972. While the defendants 1 to 3 are the legal heirs of Subramania Nadar, the plaintiffs 1 and 2 are the wife and daughter of Madasamy

Nadar. It is the case of the plaintiffs that after the death of Mahalinga Nadar, there was a partition among two sons, namely Subramania Nadar and

Madasamy Nadar as per which the suit properties were allotted to Nallamuthu-ammal, their mother, to be enjoyed for her lifetime with no power

of alienation and this allotment was made for her maintenance. So far as these propositions are concerned, there is no dispute. Both the parties

agree so far as these statements are concerned.

11. The plaintiffs' claim for partition proceeds on the footing that after the death of Nallamuthuammal her life estate has come to an end and she

died about nine months prior to the suit and, therefore, the suit properties have devolved upon the plaintiffs and the defendants in equal proportion.

But, this is being contested rightly by the defendants. The partition about which there is agreement between the parties has taken place in the year

1954 and admittedly Nallamuthuammal was allotted the suit properties for her maintenance. After the death of Mahalinga Nadar, in the properties

left by him whether ancestral or separate, Nallamuthuammal had a right of maintenance and it is in recognition of this right, Nallamuthammal was

given a life estate in the partition that took place between two sons of Mahalinga Nadar. While the partition took place in the year 1954, Act 30 of

1956 came into effect and, therefore, by virtue of Section 14(1) of the said Act, the limited estate given to Nallamuthuammal has blossomed into

absolute right.

Section 14 reads as follows :--

14. Property of a female Hindu to be her absolute property-- (1) Any property possessed by a female Hindu, whether acquired before or after

the commencement of this Act, shall be held by her as full owner thereof and not

as a limited owner.

Explanation:--In this sub-section, "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 stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a

decree or order of a Civil Court or under an award where the terms of the gift, Will or other instruments or the decree, order or award prescribe a

restricted estate in such property.

The implications of Section 14(1) of the Hindu Succession Act and the nice distinction between 14(1) and 14(2) were all exhaustively and

elaborately came up for discussion and decision in *v. Thulasamma v. V. Sesha Reddi (dead)* by L. Rs.(1997 (3) SCR 261 AIR 1977 SC 1944

The Supreme Court has observed as follows :--

The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a

tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure

Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a

right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property,

the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally

enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or

recognising such a right does not confer any new title but merely endorses or confers the pre-existing rights.

Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females

so as to advance the object of the 1956 Act and promote the socio-economic

ends sought to be achieved by this long needed legislation.

Sub-section(2) of Section 14 is in the nature of a proviso and has field of its own without interfering with the operation of Section 14(1) materially.

The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) in a

way so as to become totally inconsistent with the main provision.

The use of express terms like "property acquired by a female Hindu at a partition" "or in lieu of maintenance" "or arrears of maintenance" etc. in

the Explanation, Section 14(1) clearly makes Sub-section (2) inapplicable to these categories which have been expressly excepted from the

operation of Subsection (2).

This ruling has been followed by the Supreme Court in Himi (Smt) and Another Vs. Hira Devi (Smt) and Others,

12. Again in a recent judgment reported in AIR 1996 SC 928 (Smt. Naresh Kumari (dead) By L. Rs.v. Shakshi Lal (dead) by L. Rs. the

Supreme Court again affirmed the principles laid down in Thulasamma's case and has made the following observation at page 930 :--

Under Sub-section (1) of Section 14 when a female Hindu is put in possession of any property pursuant to her right to maintenance, her limited

right or interest in the property thus far, by virtue of Section 14(1) blossoms into full ownership. On the other hand Sub-section (2) of Section 14 is

in the nature of exception or proviso to Sub-section (1). Sub-section (1) makes a widow, who had a limited interest, to be full owner regardless

whether acquisition was prior to or after the coming into force of the 1956 Act. The language in Sub-section (1) of Section 14 makes it clear that

all what has to be shown by a female Hindu is that she had a right in the property in question and she is possessed of that property. The possession

may be physical, constructive or formal in a legal sense on the date of the coming into operation of the Act.

So, Nallamuthuammal was given the suit properties for her maintenance and this was only in recognition of her existing right for maintenance so far

as her husband's properties are concerned even while he was alive or after his death. This took place in the year 1954 and Act 30 of 1956 came

into force in 1956 and by virtue of Section 14(1) this limited extent given to Nallamuthuammal naturally blossomed into absolute right. Therefore,

after the Act came into force in 1956, Nallamuthuammal became absolute owner of the suit properties even though in 1954 at the time of family

arrangement or partition these properties were allotted to her only for her maintenance. The plaintiffs also have clearly stated even in the plaint that

the properties were allotted in the family partition to Nallamuthuammal for her maintenance.

Therefore, there can be no difficulty in holding that this limited right which was conferred on Nallamuthuammal in the year 1954 blossomed into

absolute right in 1956 by virtue of Section 14(1) of the Hindu Succession Act, 1956. Therefore, Nallamuthuammal became the absolute owner of

the suit properties and in exercise of her newly acquired rights she has executed Ex. B-1 gift deed on 1-8-1968 as per which she gifted the

properties in favour of her two grandsons, the defendants 1 and 2 born to her son Subramania Nadar. Therefore, the defendants 1 and 2 rightly

resisted the claim of the plaintiffs for a share in the suit properties.

13. The execution of the gift deed is not specifically denied by the plaintiffs and this has been also marked as Ex.B-1 through D.W.1, while the

plaintiffs have not denied the execution of Ex.B-1 gift deed by Nallamuthammal, they only chose to question her competency to execute the same

pointing out the limited estate given to her at the time of partition in the year 1954. Therefore, for the receipt of Ex. B-1 gift deed as a part of

evidence, there can be no objection on the side of the plaintiffs and the attester's examination is not necessary. Ex.B-1 is only questioned by the

plaintiffs on the ground of want of title on the part of the executor, namely Nallamuthuammal. But, as stated above, Nallamuthuammal has become

entitled to absolute right to the suit properties and she has become the absolute owner of the same.

14. Abald statement is made in the plaint that Ex.B-1 was not given effect to nor it was acted upon. This also is stated to be rejected. Subsequent

to Ex.B-1 gift deed in 1968, the defendants 1 and 2 have taken possession of the properties, patta has been changed as seen from Exs. B-2 and

B-3 and the defendants have been paying kist in respect of the suit properties. This has been proved by producing Exs. B-4 to B-8 documents.

After the gift deed Nallamuthuammal was not in possession. Nallamuthuammal has not dealt with these properties after the gift deed in the year

1968 and till she died few months prior to the institution of the suit in 1980. Therefore, there is no point in the plaintiffs contending that the gift deed was not acted upon.

15. Both the courts below have correctly appreciated the evidence and has come to the right conclusion that by virtue of Section 14(1) of the Hindu Succession Act that Nnallamuthuammal has become the absolute owner of the suit properties and she was competent to execute Ex. B-1 gift deed and she executed the same out of true love and affection in favour of her grandsons, namely the defendants 1 and 2. It is on these grounds, the claim of the plaintiffs for partition-has been rejected and I do not find any reason or justification to deviate from the findings and the conclusions arrived at by the courts below. The substantial question of law raised in the second appeal is, therefore, answered in favour of the defendants and against the appellants.

16. In the result, the appeal fails and the same is dismissed, however without costs.