

(1973) 11 MAD CK 0003

In the Madras High Court

Case No : Appeal No's. 8 of 1966 and 874 of 1966

Palaniappan alias Balasubramanyan and others

APPELLANT

Vs

Kuppammal and others

RESPONDENT

Date of Decision : 30-11-1973

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2), 14(i), 15
Registration Act, 1908 — Section 17, 17(1)(b), 49, 7(1)(b)

Citation : (1973) 11 MAD CK 0003

Hon'ble Judges : Venkataraman, J;Maharajan, J

Bench : Division Bench

Advocate : V.K. Thiruvengkatachari for M/s T.R. Srinivasan and T. Ramalingam, for the Appellant; M.S. Venkatarama Iyer, S. Mahan, K. Ramaswami, K.R. Subramaniam and A. Sarojini Bai, for the Respondent

Judgement

Venkataraman, J.—This appeal has been filed by the defendants 1 to 3, 5 to 10 and 26 in O.S. No. 23 of 1960 on the file of the Court of

the Additional Subordinate Judge of Erode, decreeing the suit. The plaint itself gives a genealogical tree, showing the relationship of the parties.

There was one Karuppanna Chettiar, who died in 1914, leaving two widows, Malaikolandu Ammal and Kungumayee Ammal. His estate devolved

on them. Malaikolundu Ammal died in 1934. Thereupon, Kungumayee Ammal, the younger widow, became the sole owner. She died on 30th

March, 1949. On her death, succession had to be traced back to Karuppanna Chettiar, the last male owner, and the estate devolved on his two

(sic) daughters, Malayammal and Kuppammal. Malayammal was the daughter by first wife, Malaikolundu Ammal. Kuppammal is the daughter by

his second wife, Kungumayee Ammal. Actually, Malaikolundu Ammal had another daughter, Angayee who was the elder sister of Malayammal,

but she had died in 1932. When succession opened on the death of Kungumayee Ammal, (sic) only the two surviving (sic) daughters, Malayammal

and Kuppammal took the estate. Each, of course, had only a limited estate, familiarly known as the Hindu women's (sic) estate. Vide: Mulla's

Hindu Law, paragraphs 174 to 176. They could not enjoy the properties amicably together, and hence a partition took place between them,

evidenced by Exs. A-15 and B-15, dated 25th October, 1949. Ex. A-15 is the copy of Kuppammal, who is the first plaintiff in the suit, and Ex.

B-15 is the copy of Malayammal produced by the first defendant, who claims to be the son of Malayammal, adopted on 28th May, 1953. Exs. A-

15 and B-15 are unregistered, and that is why a controversy has arisen whether they are admissible. According to Kuppammal, the first plaintiff,

and her sons and daughter, plaintiffs 2 to 5, Exs. A-15 and B 15 merely constitute a memorandum of the oral partition which had taken place two

days before (on a Sunday). But, according to the first defendant, Exs. A-15 and B-15 themselves constitute an instrument of partition, and,

because they deal with immovable properties more than hundred rupees in value, they are inadmissible for want of registration under S. 49, read

with S. 17 of the Registration Act. We shall deal with that question in due (sic) but we may state here that under the terms Exs. A-15 and B-15,

fifteen items of (sic) property fell to the share of Malayammal (sic) twenty-five items fell to the share of (sic)pammal. These forty items have been

listed out in the B Schedule to the present (sic) as items 1 to 40 (schedule A being the (sic) logical tree). As a matter of detail, items (sic) 15 of the

B Schedule of the present plaint (sic) listed out in the A schedule to Exs. A-15 (sic) B-15, and items 16 to 40 of the (sic) Schedule are listed out in

the B Schedule (sic) Exs. A-15 and B-15. According to the terms of Exs. A-15 and B-15, Malayammal should (sic) encumber or alienate any of

the properties which fell to her enjoyment for any (sic) and, even if she did so, it would not be valid in law. The documents further recite that,

because Malayammal had no male or (sic) heirs, and Kuppammal had male and (sic) heirs, the properties allotted to (sic) for her enjoyment should

after her lite (sic) enjoyed by Kuppammal and the grandson of Karuppana Chettiar by Kuppammal (sic) plaintiffs 2 to 4).

2. The plaintiffs allege that this was (sic) on Malayammal as a family (sic) but that contrary to this arrangement Malayammal effected some sales of

some of (sic) properties allotted to her. She also (sic) Palaniappan alias Balasubramaniam, the (sic) defendant, on 28th May 1953. Her husband

Kanniappa had died on 6th May 1950. The plaintiffs contend that the adoption is (sic) valid, because according to them Malayammal had no

authority from her husband or from the nearest reversioners to make the adoption. The validity of the adoption is therefore another important

question which arises for our decision. Malayammal died on 1st February 1959, but before that she had executed a will, Ex. B.1, dated 14th

September 1956, and a settlement deed, Ex. B 2 dated 16th April 1956, in favour of first defendant, Palaniappan. She took the stand (sic) by

virtue of S. 14(1) of the Hindu Succession Act (XXX of 1956) which came into force on 17th June 1956, the properties which had been allotted

to her under the deed of 25th October 1949 or later under an oral arrangement, she had become the absolute owner of those properties and was

therefore competent to execute the will or the settlement. She also effected some sales on 30th March 1957 and 9th April 1957 (Exs. A-5 to A-7)

on the same footing.

3. The plaintiffs filed the suit in 1960 for a declaration of their title and recovery of possession of items 1 to 15, and some more items 19, 42, and

43, of the plaint B schedule. The stand of the plaintiffs was that under Exs. A-15 and B-15 the alienations effected by Malayammal would not bind

the plaintiffs, that equally the alleged adoption of the first defendant would not bind the plaintiffs and that after the death of Malayammal, under the

terms of Exs. A-15 and B-15, the properties allotted to Malayammal and a few other properties not comprised in Exs. A-15 and B-15, became

the properties of the first plaintiff and her sons, plaintiffs 2 to 4. They impleaded, besides the first defendant, his natural father, Arumugam, as the

second defendant, and the alienees or their legal representatives as defendants 3 to 26.

4. The first defendant, who was the main contesting defendant pleaded that, in the first place, Exs. A-15 and B-15 were inadmissible for want of

registration, because they themselves purported to effect a division of the properties and were not merely memoranda of a partition which had

already taken place, that actually the first plaintiff's husband played a fraud on Malayammal and her husband who were illiterate, and introduced

fraudulent recitals against the interests of Malayammal, that that was why Malayammal refused to consent to the registration of Exs. A-15 and B-

15, that by an oral arrangement subsequent to 25th October 1949, Malayammal and Kuppammal divided the properties and that it was by virtue

of that oral agreement that Malayammal took possession of items 1 to 15 of the suit properties and also other items detailed in the written

statement. The first defendant further pleaded that the recitals that the properties of Malayammal should after her death go to Kuppammal and her

sons were fraudulent insertions and would not have any force in law, became the two daughters were only limited owners and could not prescribe

any such future devolution of property. Besides, there was no consideration for Malayammal entering into any such arrangement. The first

defendant then proceeded to contend that his own adoption was true, valid and binding on the plaintiffs and that it was made after getting the

consent of the Sapindas (agnates) of Malayammal's husband. He further pleaded that Malayammal's rights became enlarged to absolute

ownership under S. 14 of the Hindu Succession Act, XXX of 1956, that both under the will and the settlement he became entitled to the properties

and that the other alienations made by Malayammal were also valid.

5. This written statement was adopted by the alienees.

6. The learned Subordinate Judge (Thiru I. Doraimanikam) has recorded the following findings. Exs. A-15 and B-15 are valid as a family

arrangement and are binding on Malayammal and her alleged adopted son and under those does the plaintiffs are entitled to get the properties on

the death of Malayammal. The alienations effected by Malayammal would not bind the plaintiffs. The adoption is not true and the first defendant

acquired no rights by virtue of the adoption or under the will or settlement of Malayammal. As a result of these findings he decreed the suit. The

defendants 1 to 3, 3 to 10 and 26 have preferred this appeal (Appeal No. 8 of 1966).

7. Mr. V.K. Thiruvenkatachari and Mr. T.R. Srinivasan, who argued the appeal for the appellants urge, in the first place, that Exs. A-15 and B-15

themselves constitute an instrument of partition and that, being unregistered, they are inadmissible. Secondly, on the facts, they urge that

Malayammal did not accept Exs. A-15 and B-15. Thirdly, they urge that the

recital in Exs. A-15 and B-15, that after the lifetime of Malayammal the properties allotted to her for her enjoyment under Exs. A-15 and B-15 would go to Kuppammal, the first plaintiff, and her sons, would be invalid in law, because they would not prescribe for succession of interest after their life time and that such a recital would not stand in the way of Malayammal becoming full owner under S. 14 (i) of the Hindu Succession Act (XXX of 1956). They urge that the recital in Exs. A-15 and B-15, that Malayammal should not encumber the property and that, if she did so, it would not be valid, was merely a re-statement of the restricted powers of alienation of a daughter in Hindu Law, that it would not therefore, mean that Malayammal parted with her rights in any way, that consequently the properties were possessed by her on 17th June 1956, when the Hindu Succession Act, (1956), came into force, and that by virtue of S. 14(1) of that Act she automatically became a full owner. They submit that even prior to Exs. A-15 and B-15 Malayammal had a pre-existing right in the properties of her father along with her step sister, Kuppammal, that there was only a division of properties between them and that she did not acquire title to the properties for the first time under Ex. A-15 and B-15 so as to make S. 14 (2) applicable. In other words, the learned counsel urged that the plaintiffs cannot possibly contend that under S. 14 (2) the powers of Malayammal were restricted to a bare life estate and that S. 14(1) could not apply to her. They also urge that the adoption has been duly proved, that it is valid, that the first defendant got title under the settlement deed, Ex. B-2, and that it is superfluous to rely on the will.

8. The points which arise for determination may be formulated thus:

1. Whether Exs. A-15 and B-15 are inadmissible for want of registration?
2. Whether they precluded Malayammal invoking S. 14 (1) of the Hindu Succession Act, XXX of 1956?
- 3 Whether the adoption is true and valid?
4. Whether the settlement (Ex. B-2) effected by Malayammal on the first defendant is valid?
9. When dealing with the question of registration, it will be convenient to set out here itself not merely the portions relevant thereto, but also the other portions of Exs. A-15 and B-15. Paragraph 1 recites that the two parties

are Kuppammal (1) and Malayammal: (2). Paragraph 2 says that after the death of Karuppana Chettiar without sons in 1914, his two widows jointly enjoyed his properties and that Malaikolundu Ammal died in 1934. The deed then proceeds to state as follows:

This may be freely translated thus:

From 1934 Kungumayyee Ammal enjoyed the said properties exclusively, and died on 30th April, 1949. At present, because we are unwilling to

live together, we have, in accordance with the decision of mediators who have attested this, entered (sic) agreement and have divided the

properties in (sic) enjoyment in accordance with the schedules below:

No. 2 Malayammal should enjoy the A Schedule properties.

No. 1 Kuppammal should enjoy the B Schedule properties.

No. 2 Malayammal should not encumber the A Schedule properties for any reason, and even if it does so, it will not be valid in law.

On no account should one enter upon the property of the other.

Inasmuch as Malayammal has no male or female heirs, and as Kuppammal has male and female heirs, after the lifetime of Malayammal, No. 1

Kuppammal and the grandsons of Karuppana Chettiar should enjoy the A schedule properties.

They should pay their own tax, kist etc, for the properties in their respective enjoyment.

10. The first question which arises for determination is whether Exs. A-15 and B 15 are inadmissible for want of registration under S. 17 (1)(b) of

the Registration Act. S. 17(1)(b), listing out the documents to be compulsorily registered, says :

(b) other non-testamentary instruments which purport or operate to create, declare, assign (sic) or extinguish, whether in present or in future, any

right, title or interest, whether vested or contingent of the value of one hundred rupees and (sic) Wards, to or in immovable property.

11. The law on the point is really well settled, namely, if the document itself effects an allotment of immovable property (sic) hundred rupees in

value, in other words, if the document itself is the instrument of partition, it requires registration. On the other hand, if the document merely recites a

partition previously made½in Hindu Law an oral partition can be made½it

does not require registration. It is enough to refer to a few decisions

which lay down this proposition : Sakharam Krishna"ji v. Madan Krishna"ji ILR 5 Bom. 232; Subramonian v. Lutchman ILR 50 Cal. 238 (P.C.)

AIR 1932 55 (Privy Council) 59 I.A. 130; 62 M.L.J. 296; AIR 1932 P.C. 55; Gojineni Bapayya Vs. Gojineni Ramakrishnayya and Others, ;

Muhammed Ghouse Sahib v. Jamila Bi 63 L.W. 309; 1550-1 M.L.J. 151; Panchapagesan v. Kalyanasundaram AIR 1957 Mad. 472. Velusami

v. Velusami 196(sic)-2 M.L.J. 20; AIR 1962 Mad, 153. As pointed out by their Lordships of the Privy Council in AIR 1932 55 (Privy Council) .

The distinction is between a mere recital of a fact and something which in itself creates a title.

12. Applying this test to the terms of Exs. A-15 and B-15, we have no doubt that the allotment of the properties to Malayammal and Kuppammal

was made only under Exs. A-15 and B-15, that they are the instrument of partition and that therefore they require registration. In the first place, the

parties do not say that they had already effected a partition and that the document were merely evidence of that partition which had previously

taken place. Secondly, the documents say that the A schedule properties should be enjoyed by Matayammal and that the B Schedule properties

should be enjoyed by Kuppammal. The documents contain the further important recital that neither should interfere with the possession of the

other. The documents also recite that Matayammal should pay the kist etc., in respect of the A schedule properties and that Kuppammal should

pay the kist, etc., in respect of the B schedule properties. Thus, it is clear that it was under these documents title to the respective schedules has

created.

13. No doubt, some oral evidence has been let in on the side of the plaintiffs to show that a partition had already taken place two days before, but

when the document itself is clear, no oral evidence can be adduced. (Vide: Velusami v. Velusami 1961-II M.L.J. 20 at 25 : 74 L.W. 844. While

we are on the question of registration, we may as well observe that in our opinion, the clause in Exs. A-15 and B-15, that after the life time of

Malayammal the A schedule properties should go to Kuppammal and the grandsons of Karuppanna Chettiar, would also require registration under

S.7 (1)(b) because the contention of the plaintiffs is that Exs. A-15 and B-15

constitutes a family arrangement and that under the clause in question an immediate interest was created in favour of Kuppammal and the grandsons of Karuppanna Chettiar in respect of the A schedule properties, though the enjoyment by them was postponed till the death of Malayammal. In other words, the contention of the plaintiffs themselves is that this portion in Exs. A-15 and B-15 was non-testamentary and was not a testamentary disposition by Malayammal. Now, Malayammal and Kuppammal had each only a limited estate known as a Hindu Women's Estate or a Hindu Widow's Estate. (Art. 176 of Mulla's Hindu law). They could not really prescribe for devolution of the property after their lifetime, and such a disposition would, therefore, be invalid in law. But, the question of registration will have to be decided irrespective of the validity of the disposition, and we agree with the plaintiffs that the clause in question is non-testamentary and purports to create an immediate interest in favour of Kuppammal and her sons in the A schedule properties, the enjoyment, however, being postponed till the death of Malayammal. Therefore, that clause is non-testamentary in character. If so, it will squarely fall under S. 17(1)(b) and would be inoperative for want of registration. We would presently deal with the attempt of the plaintiffs to sustain the validity of the clause on the ground that Exs. A-15 and B-15 constitute a family arrangement, but we may point out at this stage itself that, even if they constituted a family arrangement, the clause would be inoperative for want of registration. This is made clear in *Umrao Singh v. Lachman Singh* 38 I.A. 104 quoted in *Maturi Pullaiah and Another Vs. Maturi Narasimham and Others*, in *Umrao Singh v. Lachman Singh* 38 I.A. 104. Their Lordships of the Privy Council observed. It was a family arrangement arrived at by the mediation or arbitration of the gentlemen who were old friends of the family, and interested in maintaining its arbitration. It was plainly intended to be operative immediately and to be final and irrevocable. It fails of effect simply because it was not registered, as required by the Registration Act III of 1877, S. 17. It is therefore void as regards immovable property.

14. We, therefore, arrive at the result that Exs. A-15 and B-15 are inadmissible for want of registration. Further, as a matter of substantive law, the clause that after the lifetime of Malayammal, the A schedule properties allotted

to her would be enjoyed by Kuppammal and her sons, has no legal force, because, as the law then stood, Malayammal and Kuppammal had each only a limited estate, known as a Hindu woman's estate. No doubt between them they constituted the owners of the properties, but, so far as alienation was concerned, they could alienate them only for legal necessity, and they could not validly prescribe for inheritance of the properties after their lifetime. The plaintiffs do not dispute this proposition, but they seek to get over it by contending that Exs. A-15 and B-15 constitute a family arrangement, and that if it was family arrangement the clause in question would be valid. We have already pointed out that even assuming that Exs. A-15 and B-15 can be called a family arrangement, as the term has been understood in the decisions which we shall refer to presently, it would not be valid, because, Exs. A-15 and B-15 were not registered. This is indeed a vital objection but, even apart from the question of registration, it is abundantly clear to us that by no stretch of imagination could Exs. A-15 and B-15 be called a family arrangement as the term had been understood in the decisions so as to validate the particular clause. The case law relating to family arrangements may be gathered from Arts. 192 and 193 of Mulla's Hindu Law and paragraph 525 of N.R. Raghavachari's Hindu Law. It is really unnecessary to enter into an elaborate discussion of the case law relating to family arrangements, because, it has been summarised in the recent decision of the Supreme Court in *Maturi Pullaiah and Another Vs. Maturi Narasimham and Others*, . One of the decisions quoted there is that of the Privy Council in *Ramayya v. Lakshmayya* ILR 1943 Mad. 1 P.C.; 1942-II M.L.J. 249 (P.C.); 69 I.A. 110; AIR 1942 P.C. 34. In that case, one Ramachandrudu died in 1859 leaving him surviving his mother, Bangaramma, and a young widow, Achamma, Soon after his death in 1859 itself, there was arrangement between Achamma and Bangaramma and the properties of Ramchandrad were divided between them. In 1866 Bangaramma conveyed the properties which she got by the above arrangement, to her daughter son Subbaramayya. Achamma raised dispute over this, and, as a result, a settlement was effected between them by mediators 1867, under which Achamma got absolute title to 1/3 share of the properties given Bangaramma to Subbamma and Subbaramayya took 2/3 share. After the death Achamma and

Bangaramma, the names reversioner to the estate of Ramachandrud filed a suit for setting aside the alienation made by the two widows. The

alienees rule on the on the arrangement of 1867 as a bona fide settlement of family dispute in respect (sic)estate of Ramachandrud between his

widow and Subbaramayya, which would in law (sic) the reversioner, though he was not a party it. This contention was negated by the Judicial

Committee in the following terms:-

but what is important to notice is Subbaramayya had no rights to the property (sic) what he derived by the gift made in his (sic) Bangaramma.

Since it had not been show (sic) Subbaramayya had any competing title of in respect of the properties in dispute, there (sic) no basis, in Their

Lordship's opinion, for a (sic) family settlement between the parties which (sic) bind the reversion. In Khunni Lal v. Gubind Krishan Narayan 38

I.A. 87. Their Lordships pointed out that the (sic) test to apply to a transaction which is challenge by the reversioners as an alienation not binding a

them is, whether the alienee derives title from in holder of the limited interest or life interest the present case it is clear that what title Subbaramayya

had to the properties was acquired under the compromise from the widow, since he had (sic) antecedent title of his own to them in the

circumstances, their Lordships agree with the High Court that the claim of the contesting defendant two-thirds share of the properties cannot (sic)

on the agreement of 1897.

15. This case was cited before their Lord ships of the Supreme Court in Maturi Pullaiah and Another Vs. Maturi Narasimham and Others, for the

proposition the in order to validate a family arrangement should be shown that there was a competing title in each of the parties. This interpretation

of the decision, however, was rejected by The Lordships of the Supreme Court, bunch decision was explained on the follow in footing:

Relying upon this judgment it is contended that a competing title is a necessary condition for the validity of a family arrangement. But, it will be

noticed that the widows, who had only a woman interest in the property, divided the property between themselves; they could not enlarge their

interest in the estate. A widow could enter into a bona fide arrangement in regard to the estate only to preserve it against a conflicting claim against

the estate.

This explanation of the decision of the Privy Council in *Ramayya v. Lakshmayya* ILR 1943 Mad. 169 IndAp 110 directly applies to the present

case. By Exs. A-15 and B-15 the two daughters, Malayammal and Kuppammal, sought to provide for the devolution of the property after their life

time by inserting a clause, that after the life time of Malayammal the A schedule properties should go to Kuppammal and her sons. As pointed out

by their Lordships of the Supreme Court, they could not enlarge their interest in the estate and such a disposition would be invalid. The present

case is, therefore, governed by the decision of the Privy Council in *Ramayya v. Lakshmayya* ILR 1943 Mad. 169 IndAp 110. The title which

Kuppammal and her sons claim under the clause in question in Exs. A-15 and B-15 is a title derived from Malayammal and possibly from

Kuppammal just as the title claimed by Subbaramayya in the Privy Council case, was a title derived from the widow Bangaramma. Just as the

arrangement in that case was held not to clothe Subbaramayya with any title, so too it must be held in the present case that the arrangement would

not clothe Kuppammal and her sons with any vested rights in the A schedule properties which were allotted to Malayammal under Exs. A-15 and

B-15.

16. We may add, for the sake of completeness, that the bar of the Registration Act in respect of the clause in question in Exs. A-15 and B-15,

cannot be got over by the plaintiff's by urging that S. 7 (1)(b) would have application only in respect of a non-testamentary instrument and that the

clause in question was really testamentary in character. Such a contention would not avail them, because, in such a case, Malayammal could, at any

time, cancel that testamentary disposition, and, as a matter of fact, she did so by making the will, Ex. B-1, dated 14 September 1956, and the

settlement deed, Ex. B-2 dated 16 April 1957, in favour of the first defendant, Palaniappan.

17. We think it pertinent to observe that the only reason stated in documents, Exs. A-15 and B-15, for the arrangement is that the two sisters,

Malayammal and Kuppammal, were unwilling to live together. Beyond this, it does not appear that Kuppammal or her sons put forward any title.

The only title put forward was that of the two sisters as daughters of their father. The oral evidence also does not show any other dispute beyond

the unwillingness of the two sisters to live together. See, for instance, the evidence of the first plaintiff, as P.W. 1. (at page 40, line 31):

There was no dispute between me and my sister Malayammal.

No doubt, she says (at page 42, lines 28 to 30):

There was no dispute in regard to properties. There was dispute in regard to properties prior to the agreement.

There were many panchayats.

But, that again would only seem to be a dispute arising from their unwillingness to live together and enjoy the properties in common. There was no

dispute on the basis of any other title different from that of a daughter of her father. Indeed, Exs. A-15 and B-15 were just a division of the pre-

existing interest of the two daughters as limited heirs of their father's estate.

18. The decisions in *M. Pullih v. M. Narasimhan* AIR 1966 S.C. 1836-1967-II M.L.J. 14 S.C. *Krishna Baharilal v. Gulabchand* AIR 1971 S.C.

1941 and *S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others*, are cases of valid family arrangement and are distinguishable.

Similarly, the cases in *Seetharama Pilla v. Sevu Pillai* 83 L.W. 226 *Subbaraju v. Narayanaraju* AIR 1926 Mad. 1093 *Khantamoyee Devi v. Hari*

dayananda AIR 1929 Calcutta 149 cited by Mr. M.S. Venkatarama Iyer are not applicable.

19. We have thus far arrived at the result that Exs. A-15 and B-15 are invalid for want of registration and that the recital therein that after the life

time of Malayammal the properties allotted to her under the deed would go to Kuppammal and her sons, is void. The contention of Mr. V.K.

Thiruvengkatachari, the learned counsel for the appellant, is that, in this state of things, Malayammal became a full owner on 17th June 1956 under

S. 14(1) of the Hindu Succession Act. 1956. Though the terms of S. 14 are familiar, it is better to quote it here in full :

14 (1). Any property possessed by a female Hindu whether acquired before or after the commencement of the 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-S. (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 instrument or the decree, order or award prescribe a restricted

estate in such property.

The decision in Sampathkumari v. Lakshmi Ammal 1962-II M.L.J. 464; 75 L.W. 639, is authority for the position that the partition effected

between Malayammal and Kuppammal of their pre-existing interest under Exs. A-15 and B-15 would not mean that they acquired their rights to

the properties respectively allotted to them under Exs. A-15 and B-15 so as to make S. 14(2) applicable. There it is observed:

Secondly, we are also in agreement with the learned Subordinate Judge that it cannot be said that the widow acquired the right to the properties

only under the partition deed, for the simple reason that they had acquired the right even previously by inheritance as widows of their husband and

the partition merely divided the properties allotting some to the first defendant and the rest to the fourth defendant. The word "acquired" means that

prior to the acquisition the widows could not have had any interest in the lands whatever.

In this case, we have to substitute the word "daughters" for "widows" in the above passage.

20. Mr. M.S. Venkatarama Iyer, appearing for the plaintiffs-respondents, concedes that, in view of the above decision and other decisions on the

point, he cannot contend that the two daughters, Malayammal and Kuppammal, acquired the properties under S. 14(2) of the Act, but, he

contends that this does not mean that S. 14(1) of the Act is automatically applicable. His argument can be put thus: S. 14 (1) is meant to apply only

to a case where, at the time of the commencement of the Act, a female Hindu was possessed of a limited estate known in Hindu law as a Hindu

widow's estate or a Hindu women's estate, the main characteristic of which is that the female Hindu is the owner of the property, though her rights

of alienation are restricted. But, in this case, Malayammal was not a limited

owner in that sense of the term. Though, prior to Exs. A-15 and B-15, she had along (sic) Kuppammal, a Hindu women's estate (sic) properties inherited by them from their father on the death of Kungumayec Animal, Malay ammal chose under Exs. A-15 and B-15 (sic) reduce that estate to a bare life estate, be out she undertook not to encumber the properties which were allotted to her for any reason. But for this clause, she would have had angle to encumber the properties for legal (sic) to the extent necessary, i.e., to maintain herself. But she lost even that right by the clause (sic) treating her right to encumber or sell the (sic) for any reason. The effect office of that proviso was to reduce the previously (sic) interest, known in Hindu law as a Hindu Woman's estate, to that of a life estate, as (sic) known to us. S. 14(1) was not mean (sic) parliament to enlarge such a bare life estate its intention was to benefit only a female Hindu who was still possessed of a Hindu woman's estate at the time of the commencement of the Act.

21. The argument is, however, totally an acceptable to us. In the first place, we cannot assent to the proposition that, as a result of the clause, that she would not encumber the properties in any manner and that, if she (sic), so, it would be void, Malayammal meant (sic) curtail her existing interest, familiarly know as a Hindu woman's estate and which has been explained in the leading text books, like Mulh and Raghavachari. We agree with she contention of Mr. V.K. Thiruvengkatachari that the recital in question merely re-stated the existing legal position that a daughter could not alienate the properties except under certain circumstances. Secondly, even assuming for the sake of argument that by the clause is question Malayammal reduced her providence existing estate to a life estate, it would (sic) deprive her of the benefit of S. 14(1). The words used in S. 14(1) are ""and not a (sic) limited owner"". These words are with enough to include even a life estate, so (sic) as the life estate was not acquired by her within the meaning of S. 14 (2). To held, otherwise would mean that there is a lacuna in the Act, because Mr. M.S. Venkatarama Iyer concedes that S. 14 (2) would not apply, and according to his contention, S. 14 (1) would not apply either. The Court must obviously reject a contention which produces a lacuna, unless it is forced upon it. It will be noted that the opening words in S. 14 (1) are: ""Any properly"", and the

words are wide enough to include even a life estate, such as the one to which, according to Mr. M.S. Venkatarama Iyer, Malayammal chose to reduce her previously existing estate. In our opinion, the real criterion for the applicability of S. 14 (1) (always assuming that S. 14 (2) does not apply) is whether the property was possessed by the female Hindu. If the property was possessed by the female Hindu, that would be sufficient to give her the benefit of S.14(1).

22. Developing the first reason we would observe that the recital in Exs. A-15 and B-15, that Malayammal would not encumber the properties

and that, if she did so, it would not be binding on the reversioners, cannot in law amount to a curtailment of her estate known to Hindu Law and

was merely a re-statement of the legal position that Malayammal could not alienate the properties allotted to her except under certain

circumstances. Supposing she had not alienated the properties allotted to her at all, it could not be contended that her rights were reduced from a

Hindu woman's estate to a life estate. The position would not be different merely because she undertook that she would not encumber the

property in any manner and that, if she did so, it would not be valid. At the most, such a recital would only mean that she would not alienate the

properties in a manner which would bind the reversioners when the reversion opened, and it could not mean that any alienation by Malayammal

would not be valid even during her own life time. On this point, Mr. V.K. Thiruvengkatachari, the learned counsel for the appellant has cited two

decisions, *Bibi Sahodra v. Raijang Bahadur* ILR 8 Cal. 224 P.C.S. IndAp 210 and *Ramasingh v. Harakudhari Singh* 47 I.C. 710. In *Bibi Sahodra*

v. Rai Jang Bahadur ILR 8 Cal. 224. P.C.S. IndAp 210 the estate was claimed by the Kuldeep Ram and Mainan Koer who was the widow of his

cousin Mehtab Ram. Kuldeep Ram claimed to be entitled to the whole property, subject only to such maintenance as the widow might be entitled to.

The widow claimed the whole during her life time or widowhood as representing Mehtab Ram. The parties came to a compromise and a decree

followed in the suit. Under the compromise, certain properties which had been held by Mehtab Ram were to remain in equal shares in the joint

possession and enjoyment of Kuldeep Ram and the widow, during the life time of the widow, but the widow "shall have no power to alienate the

movable or immovable properties and after the death all the movable and immovable properties and the outstanding of the time of Roy Mehtab

Ram and the said Mussmat (widow) shall be the right of the declarant (Kuldip Ram)"". But, the widow effected a sale to the ancestors of the

appellant on 5th June, 1845, of part of the properties. Kuldip Ram died in the year, 1852, and the widow died on 12th October, 1862. The heirs

of Kuldip Ram brought a suit just before the expiry of twelve years from 12th October, 1862. The question involved was one of limitation. The

contention on behalf of the appellant was that limitation began to run from June, 1845, which was the date of the sale by the widow, whereas the

contention of the plaintiffs was that it commenced only on 12th October 1862. The argument on behalf of the appellant was that the effect of the

compromise was to give Mainan Koer an interest in the property on condition that she should not alienate, that by her attempt to alienate she also

broke the condition, that the entirety of the property then vested in Kuldip Ram and that the time of limitation began to run from that moment. Their

Lordships were of the opinion that no such condition attached to Mainam Koer's life estate and that therefore, there was no forfeiture of it. Their

Lordships observed:

There is every Indication that Mainan Koer was to have just as full an enjoyment of her interest in the property during her lifetime as Kuldip Ram

was to have in his, and there is no reason whatever on the face of the deed why she should not deal freely with her interest. And where it is said

that she shall have no power to alienate the property that prohibition is coupled closely with the statement that after her death, the property shall go

to Kuldip Ram. The inference to be drawn from that is, that when the parties spoke of alienation they were thinking of alienation in perpetuity, and

the thing they desired to prohibit was such an alienation as would prevent Kuldip Ram taking the succession immediately upon Mainan Koer's

death. That being so, the alienation of Mainan Koer was perfectly good for her life time.

It seems to us that these observations will apply to the present case. The recital in Exs. A-15 and B-15 that Malayammal would not subject the

properties to any encumbrance and that, if she did so, it would not be valid according to law was only to restate the legal position that any

alienation by her would not in law be binding on the reversioners. The fact that shows that the parties only intended to restate the law as it was.

23. The above decision was followed in *Rama Singh v. Harakhdhari Singh* 47 I.C. 710. There, one Hibal Singh died. The plaintiffs claimed to have

succeeded to his properties by right of survivorship. On the other hand, Sakalbasi Kuer, the widow, claimed that her husband was separate from

the plaintiffs and that she inherited the properties as an heir under the Hindu law. There was a compromise which recognised the possession of the

widow, but stated that:

If the widow makes any transfer or creates any incumbrance that would be null and void and there will be no injury to the title of Jadunath Singh

and Palkhdhari Singh (Plaintiffs) and their heirs and representatives.

The widow, however, effected a sale in 1955. The plaintiffs brought the suit challenging the alienation and stating that it was not binding on them. It

was held that the sale deed was good for the widow's life time, but would not bind the plaintiffs as it was not for legal necessity. The point to be

noticed is that it was held that the terms of the compromise did not detract from the widow's right to deal with the properties as a Hindu widow

under the Hindu law. The learned Judges observed:

Be that as it may there can be no doubt that the compromise petition itself purported to give the defendant No. 1 the right of a Hindu widow,

neither more nor less. The terms of that compromise referred to above, namely, that the transfer made by her will be null and void and would not in

any way prejudice the right of the reversioners and their heirs and representatives are intended to give her a life estate with such powers and

limitations as are vested in a Hindu widow. This is obvious from the position of the parties and from a true interpretation of the terms of the

compromise. All that appears to have been intended is that alienation made by the widow should not be binding upon the reversioners at all. There

is no intention that the widow shall not be able to deal with the property as a Hindu widow under the Hindu law. This appears to be the view of

their Lordships of the Privy Council to the case of *Bibi Sahodra v. Rai Jang Bahadur* ILR 8 Cal. 4 P.C. dealing with a compromise petition exactly

of the nature that we have in this case.

24. We are, therefore, of opinion that the clause in question in Exs. A.-15 and

B.15 would not mean that Malayammal could not alienate the properties allotted to her even for her life time. This is the normal incident of a Hindu woman's estate and the clause in question cannot reduce that estate to a life estate. Indeed, as pointed out by their Lordships of to Privy Council in *Thakur Vasonji Konnaaji v. Mussamat Chande* (sic) ILR 37 All. 369 : 29 M.L.J. 130, (P.C.) quoting Mayne's Hindu Law; ""Hindu law knows nothing of estates for life or in fee."" As already pointed out, the (sic) question, particularly at the end, that (sic) she did so, it would not be valid according (sic) law, merely restates the Hindu law the (sic) alienation, without necessity, would (sic) the reversioners, and it cannot be (sic) mean that the widow could not even (sic) for necessity. If, however, the clause is (sic) construed as one that even for necessity could not alienate the properties there no consideration for such a restoration are restriction would be invalid on that (sic). In fact, Malayammal's subsequently (sic) shows that she did not accept life A-15 and B.15 as binding upon her, and in some legations which cropped up with its (sic) to he properties not covered by Exs. A.-15 and B-15, Malayammal and Kuppammal come to compromise dividing those other properties equally between them leaving the Valium of Exs. A-15 and B-15 open. This has been spoken to by D.W. 1, the second selected his evidence. The document clause them can be grouped in five sets Hindu there was a suit, O. S. No. 161 of 1950, and the concerned exhibits are Exs B-4, A-20 A-21 in respect of Survey No 557 (sic) in the plaint). Secondly, the was O.S. No. 262 of 1950, concurring item (sic) and the concerned exhibits are Exs.B-5, (sic) B-6, B-7 and A-1. Thirdly, there was (sic) O.S. No. 321 of 1950, cooperating (sic) No. 555-A and the relevant exhibit (sic) Exs.B.-8, A-23, B-9 and (sic) there was a suit O.S. No. 428 of that (sic) relating to Survey No. 240, item No.(sic) Exs. A-24 and A-25 are the relevant exhibit There was also a suit, O.S. No. 47 of 19 (sic) regarding the house in Ward No. 6 (sic) (sic) No. 23. The concerned exhibits are Exs.B-14, B-11 and B-23.

25. Assuming, however, for the asked of argument, and argument only, that by the clause in question Malayammal reduced (sic) interest to a life estate and that it would be valid in law, we are of opinion the that would not deprive her of the benefit of S. 14(1) long as it could be postulated

that should (sic) acquire the life estate under S. 14(2). We have already pointed out that Mr. M.S. Venkatarama Iyer himself concedes that

Malayammal did not acquire the life estate within the meaning of S. 14(2), and the concession is quite proper, because, Exs A.-15 and B-15

themselves resale that Malayammal and Kuppammal had both inherited the properties in the usual way as daughters, after the death of

Kungumayee Ammal. They had therefore each an estate known as a Hindu woman's estate, and the contention of Mr. M.S. Venkatarama Iyer is

that Malayammal only restricted her rights under Exs.A-15 and B-15 to a life estate—it was a restriction and not an acquisition. Our main reasons

for not accepting the argument of Mr. M.S. Venkatarama Iyer can be stated in a three-fold way: Firstly, the opening words in S. 14(1) are "Any

property" and are so general that they would include a life estate such as the one postulated by Mr. M.S. Venkatarama Iyer in the present case.

The terms of the explanation to S. 14(1) are sweeping and emphasise that the widest meaning should be given to the opening words "Any

property" in S. 14(1), so long as the property is possessed by the female Hindu. A life estate such as the one envisaged by Mr. M.S. Venkatarama

Iyer in this case would also be property and there can be no doubt that the property was possessed by Malayammal. Just by way of illustration we

would point out that a life estate would be as much property as a usufructuary mortgage right. Suppose, for instance, that a male Hindu had only a

usufructuary mortgage right in a particular property and that it devolved on his widow, under the Hindu Women's Rights to Property Act, (1937).

As a result of S. 14(1) of Act (XXX of 1956), she would become a full owner of the usufructuary mortgage right, preventing any reversionary right.

If, however, she had transferred the usufructuary mortgage right in her life, S. 14(1) would not come in and the usufructuary mortgage right would

pass to the reversionary heirs. What we are anxious to point out is that the words "Any property" used in S. 14(1) are not necessarily limited to

absolute right in the property, but, are wide enough to include even limited rights in the property, like a usufructuary mortgagee's right and a life

interest.

26. Our second reason for rejecting the contention of Mr. M.S. Venkatarama Iyer is that the words, "and not as a limited owner" which occur at

the end are again wide enough to include not merely an estate familiarly known as a Hindu woman's estate, but also a life estate which is

ascribed in this case to Malayammal by Mr. M.S. Venkatarama Iyer. It would be pedantic to substantiate the proposition that a life estate holder is

a limited owner in jurisprudence, but Mr. M.S. Venkatarama Iyer's contention obliges us to quote Salmond on Jurisprudence, for instance, S. 47

(at page 255 of the Twelfth Edition):

THE FRAGMENTATION OF OWNERSHIP IN RESPECT OF TIME.

So far we have discussed how two or more persons can be simultaneously owners of the same property by being co-owners. Much more important

is the way in which the rights of ownership can be split between several persons on the temporal plane.

For example, a landowner wishing to provide for his sons, A and B, may constitute them co-owners of it. Alternatively, he might divide the land

into two parts, giving one part to each as sole owner. A third method would be to convey the land to A for life and thereafter to B in fee simple.

In this case neither son becomes sole owner of the land; nor would they be co-owners. Each is sole owner of a separate estate or interest in the

land. A has a life estate, which is vested in possession; B has a fee simple remainder vested, not in possession, but in interest.

27. Thirdly, if we were to accept the contention of Mr. M.S. Venkatarama Iyer, it would leave a lacuna in the Act, because *ex hypothesi* S. 14(2)

does not apply and, according to the contention of the learned counsel, S. 14(1) would not apply. It is a well-known principle of law that the Court

should avoid a construction which produces a lacuna in the Act and this is particularly so in this case, because it seems so to be the obvious intention

of the Legislature in enacting S. 14, that, where S. 14(2) does not apply, S. 14(1) would apply, so long as it can be said that there is property

legally possessed by the female Hindu. We are mentioning this last rider, because in *Manipur Administration Vs. Thokchom, Bira Singh*, it has

been held that a female Hindu holding the property merely as a trespasser cannot have the benefit of S. 14(1). Though that was the proposition

which was decided in that case, the decision contains observations showing that, so long as a Hindu female has acquired some kind of title,

however restricted the nature of her interest may be, she becomes a full owner

under S. 14(1). The facts were briefly these. There was one Eran Gowda who left two widows, Eramma and Siddamma, and a son Basanna by his third wife, one Sharnamma. Basanna was the last male owner and he died in Fasli 1347 (corresponding to 1st July, 1936 to 30th June, 1937). After his death, his step-mothers, Eramma and Siddamma got into possession of the properties. Respondents 1 and 2 in the appeal before the Supreme Court filed a suit claiming that they, as the nearest heirs of Basanna, were entitled to the properties. The suit was contested by Eramma and Siddamma, each claiming to have an adopted son. The trial court rejected the claim of Eramma, but upheld the claim of Siddamma. On appeal, the High Court negatived the claim of Siddamma as well and decreed the suit. Proceedings for appeal to the Supreme Court were pending. In the meantime, the Hindu Succession Act, 1956, came into force. The plaintiffs sought to execute the decree of the High Court. Eramma filed an objection in the executing court contending that she had been in possession of half of the properties since the death of her husband and that she had become full owner thereof under S. 14(1) of the Act. The District Judge accepted her contention, but her claim was rejected by the High Court. Eramma appealed to the Supreme Court. Their Lordships dismissed the appeal pointing out that at the time of Eran Gowda's death there was no provision of law like the Hindu Women's Rights to Property Act, 1937, and that she had no legal title to the properties of Eran Gowda at the time of the promulgation of the Hindu Succession Act, 1956. They observed:

It is true that the appellant was in possession of Eran Gowda's properties, but that fact alone is not sufficient to attract the operation of S. 14. The property possessed by a female Hindu, as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to S. 14(1) sets by out the various modes of acquisition of the property a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be.

28. Mr. M.S. Venkatarama Iyer has not been able to cite any decision in support of his contention. The decisions he has cited are really of no

application. They are : Seetharama Pillai v. Sevu Pillai 83 L.W. 226 Santhanam Kachapalaya Gurukkal v. Subramania Gurukkal 85 L.W. 202 and

Unnamalai Ammal v. Vellaya Pillai 1971-I M.L.J. 147 ; 83 L.W. 717 and Thayammal v. Salammal 1971-II M.L.J. 286 ; 84 L.W. 575. Of

course, the Act being recent, it may not be possible to expect any direct decision in support of his contention. But, he is not able to cite any reason

why a limited construction should be pleased on S. 14(1) On the contrary, seems to as that the reasons we have given are sound.

29. Mr. T.R. Srinivasan, the learned counsel for appellant, urges that there is unreported decision of Ramamurthi, J., (sic) S.A. No. 462 of 1967,

supporting the view we have taken. In that case there were three (sic) brothers, Pattabiraman, Krishnamurthi and Kothandaraman. A division had

taken place between them. Pattabhiraman died in 1945 leaving a widow, Dhanalakshmi. In (sic) Dhanalakshmi executed a settlement (sic) (Ex A-

1) in favour of the second defendant retaining a life interest for herself and giving the vested remainder to the second defendant Dhanalakshmi died

in 1958. Thereafter (sic) suit, out of which the second appeal (sic) was instituted by Krishnamurthi, alleging that he and the other brother, (sic)

were entitled to the property. The second defendant contended that (sic) estate became enlarged (sic) ownership (sic) S. 14(1). The plaintiff's

counsel this argument by urging that by the settlement deed, (sic) had parted with owner ship of the properly. The contention of the plaintiff was

rejected and the learned Judge held that by retaining a life estate she (sic) sufficient ownership and was possessed of(sic) property. He further took

the view that is matter was really concluded, in that sense be the decision of the Supreme Court in Katurswami v. Veerayya 1959 Sup. 1 S.C.R.

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30. In that case, the last male owner one Kari Veerappa. He left a will authorise his wife, Setra Veeravva (the first defendant the suit which gave

rise to she appeal in the Supreme Court) to adept a son. She (sic) the second defendant, Sesalvada Kotra has ayya, on 11th October, 1942.

There was ante-adoption agreement, winch provided the she was to remain in possession of her husband's estate during her life time in spite the

adoption. The reversioner brought a questioning the adoption. The adoption (sic) held valid and the suit was dismissed by the trial judge. The

decree of the trial Judge was substantially affirmed by the High Court. Hence , the further appeal by the reversion A preliminary objection was

taken (sic) Supreme Court for the responded (sic) following reasoning. If the abetment (sic) valid, the suit had necessarily to fail. (sic) the adoption

was not valid the suit roust fail because Veerayya had become a full owner under S. 14of the Hindu Succession Act, 1956, which had come into

force during the pendency of the appeal in the Supreme Court. Their Lordships, in deciding that question, proceeded on the assumption that the

adoption was invalid (because, if the adoption was valid, the suit must necessarily fail). It was contended on behalf of the appellant that the widow

was not in possession of the property but the property was in the possession of the second defendant and that S. 14 (1) would not apply.

According to them, it was actual physical possession of the property which mattered for the purpose of attracting S. 14 (1). Their Lordships were

inclined to hold that, on the existing evidence, physical possession was with the widow, the first defendant. Their Lordships, however, observed

that, since the question had arisen only during the pendency of the appeal to the Supreme Court, the attention of the parties might not have been

concentrated on that point and that, if necessary they would have been prepared to call for a finding. But they proceeded to point out that it was

not necessary to adopt such a Course, because, even on the assumption that actual physical possession was with the second defendant, it was

merely permissive possession on behalf of the widow, and that such a constructive possession of the widow was sufficient to attract the provisions

of S. 14(1).

31. Ramamurthi, J., however, seems to have understood the above decisions of the Supreme Court on the basis that the widow herself was in

possession and that the possession was lawful, because of the ante-adoption agreement. We shall revert to this presently, but, as we pointed out.

Their Lordships proceeded to consider the preliminary objection the, assumption that the physical possession was actually with the adopted son,

but they say that the possession was permissive. They have not explained why they say that the possession was permissive, but it seems to us that

is was because of a two-fold reason. Firmly , the assumed possession with the adopted on was not with title, because, if the adoption was invalid,

the possession was without title. Secondly, the possession was not adverse to the widow, because under the ante-adoption agreement the widow had a right to be in possession during her life time, and right through starting from the written statement, the second defendant had himself acknowledged that the widow was in possession, thereby intimating that, even if he was in possession, it was not adverse to the widow. It seems to us that it was because of these two circumstances that the widow was held to be in constructive possession, even if she was not in physical possession.

32. The decision has, however, another aspect, as pointed out by Ramamurthi, J., namely, that, under the ante-adoption agreement, she had a right to be in possession, and that was the main plank of the further consequence that even the physical possession with the adopted son was only on her behalf. We would observe that our case is an *a fortiori* case, because Malay animal was in actual physical possession of the properties allotted to her under Ex. A-15, when Act XXX of 1956 came into force and she had not parted with possession of the properties. Even the contention of Mr. Venkatarama Iyer is that she only reduced her previously existing Hindu woman's estate to that of a life estate and he does not contend that she was not in possession of the estate. She was actually in possession of the properties and she was entitled in law to a restricted the, even according to the contention of Mr. Venkatarama Iyer.

33. Reverting to the decision of Ramamurthi, J., the point to be noted is that the widow retained a life interest. The term in the settlement deed, that after her life time the property should go to the settle, was really invalid in Hindu law, because she had no power to prescribe for the devolution of the property after her death. She was therefore possessed of the property within the meaning of S. 14 (1) of the Act.

34. The decision of Ramanujam, J., in *Rangammal v. M. Muthuraja* 1970 II M.L.J. 620 ; 83 L.W. 541 was cited before Ramamurthi, J., and was rightly distinguished by him. In that case, the widow had settled the property with a condition that the suit property should be enjoyed jointly by her and the settles and that thereafter the property should be taken absolutely by the settle. Ramanujam, J., held that she had parted with her legal right in the property, that she was not in possession exercising rights of

ownership and that, therefore, she was not possessed of the property within the meaning of S. 14(1) of the Act. This decision too does not support the contention of Mr. Venkatarama Iyer, before us.

35. The learned Subordinate Judge has taken the view that S. 14(2) would not apply, but he has expressed the opinion that on the theory of

promissory estoppel, Malayammal, and consequently, the first defendant were stopped from claiming the benefit of enlargement of a Hindu

woman's estate to full ownership under S. 14(1) of the Act. Mr. M.S. Venkatarama Iyer did not put forth any such contention before us, and

therefore it is not necessary to deal with it at any length. Suffice it to say that the criterion for the application of the principle is that on account of

the representation by Malayammal in Ex. A-15 that after her the properties would go to Kuppammal and her sons, Kuppammal and her sons

altered their position. There was no such alteration in their position and we repeat that such a provision would be totally void in Hindu law because,

by no stretch of imagination, could Malayammal and Kuppammal enlarge their limited Hindu woman's estate, which was all that they possessed

then. It is unnecessary to go over the ground which we have already covered.

36. Mr. M.S. Venkatarama Iyer, however contends that even if Malayammal became a full owner under S. 14(1) of the Act, the first plaintiff

would still be entitled to succeed as the heir of Malayammal under S. 15 of the Act. He puts it in the following way. Malayammal executed a will

Ex. B-1, dated 14th September 1956 in favour of the first defendant, only on the footing that he was her validly adopted son. She superseded the

will by executing the settlement deed, Ex. B.2 dated 16th April 1957. There again she settled the properties on the first defendant but according to

the contention of Mr. Venkatarama Iyer, that was only on the footing that he was her validly adopted son. The adoption however, (so Mr.

Venkatarama Iyer contends) was not valid. It would therefore follow that Malayammal died intestate that S. 15 would come into play and that

Kuppammal would succeed.

37. We are unable to accept any of these contentions. In the first place, as we shall show the adoption was true and valid. Secondly, our view of

Ex. B-2 is that Malayammal settled the estate on the first defendant as a persona designate and not on any condition that his adoption was valid.

Hence, Malayammal did not the intestate and there is no scope Kuppammal becoming her heir under S. 15th Act.

38. We shall now explain why she adoption is true and valid.

x x x x

[Discussion of facts omitted : Ed.]

39. It may be noted that in Ex. A-3 (sic) says that she had heard it said the Malayammal had distributed invitation the adoption ceremony, and had

actual, adopted the said child Palaniappan. The letter was written on 28th May, 1953, and the strongest possible evidence to show that the

adoption had actually taken place may be noted further that, if really the (sic) of the agnates had not been obtained, (sic) would have mentioned it

in the (sic) front in Ex. A-3. On the other hand, she was prepared to concede that the adopted (sic) would inherit the properties of late husband or

her late father-in-law. The means that the first defendant had (sic) validly adopted by Malayammal, and as the properties which had come to (sic)

from her father Karuppanna (sic) are concerned the first defendant would (sic) daughter's son of Karuppanna Chettiar, and but for the contention

based on the (sic) Exs. A-15 and B-15, the first defendant (sic) be a possible reversioner to the estate Karuppanna Chettiar, as the law stopped

.1953, at the time of the adoption, prior (sic) enactment of the Hindu Succession Act. 1950.

40. The clause in Exs. A-15 and B (sic) that after the death of Malayammal, the properties allotted to her would go to Kuppammal and her sons,

cannot be taken as (sic) venting Malayammal from adopting a boy her husband. Neelangouda v. (sic) 1949-1 M.L.J. 94. Even if it is possible to

imply a prohibition such an adoption, it would be invalid in law as being opposed to public policy. Vide the decisions in Shasti Charan Biswas v.

Nakt Chandra Barua 25 M.L.T. 204 ; 49 I.C. 959 and Mayne's Hindu Law page 200.

41. It is in the light of the stand taken by Kuppammal in Ex. B-17, in particular, the circumstance she did not challenge the adoption on the ground

that there had been not consent by the agnates, that we must apprise at the documentary evidence afforded by Exs. B-21 (deed of consent), B-

20 (ante-adoption agreement) and B-21 (adoption deed) and the oral evidence of D.Ws. 1 and 4.

x x x x

[Discussion of facts omitted : ½Ed.]

42. In view of our finding the adoption is true and valid, the first defendant would get the properties under Ex. B-2, even if Ex. B-2 were to be

construed as conferring the said properties on him only on the footing that there had been a valid adoption. But, we are inclined to take the view

that the properties were given to him under Ex B-2 as persona designate, irrespective of the validity of the adoption. We shall quote the relevant

portion of Ex. B-2:

Considering the salvation of my husband's son and myself I took you in adoption as my son on 28th May, 1953. I have been keening you with

myself and maintaining you. I have become aged and weak and my sickness has not been cured and is increasing day by day. In order to prevent

any dispute that may arise in respect of my properties after my life time, and since you are my adopted son and you are the only person to acquire

all my properties, I have executed this deed of settlement out of my own free will and consent. That is, the under mentioned properties which are in

my absolute possession and enjoyment are hereby given to you and you shall hold and enjoy the same absolutely from this day itself. The aforesaid

properties have been delivered to your father, M Arumugham, on your behalf this day itself.....

I have through this deed of settlement, this day itself conveyed to you, the properties which came to be possessed by me as aforesaid. You

yourself shall hold and enjoy the under mentioned property absolutely with powers of alienation by way of gift, exchange, sale, etc from son to

grandson and so on in succession.

43. It is unnecessary to discuss in detail the decisions cited on the point on either side, like, *Fanundra Dab Raikat v. Rajeswor Das* ILR 11 Cal.

463 (P.C.). *The Court of Wards v. Venkata Surya Mahipati Ramakrishna Rao* ILR 20 Mad. 167., affirmed in *Venkata Surya Mahipati*

Ramakrishna Rao v. The Court of Wards ILR 22 Mad. 383 (P.C.), *Subbaroyar v. Subbammal* ILR 24 Mad. 214 and AL. PR. *Ranganathan*

Chettiar Vs. AL. PR. AL. Periakaruppan Chettiar, .

44. Mr. V.K. Thiruvenkatachari, the learned counsel for the appellant, drew our attention to Ex. B-16 and A-17 dated 29th March, 1958, and

contended that they would show that even Kuppammal recognised the validity of the adoption. The position may thus be explained.

X X X X

[Discussion of facts omitted: ½Ed]

45. Having regard to these facts, there is some force in the submission of Mr. V.K. Thiruvenkatachari, that the adoption was recognised as valid

by Kuppammal in the above transaction. But we feel that, nevertheless, Kuppammal is not precluded from challenging the adoption in the present

suit which she filed later, and that the question of the truth and validity of the adoption has to be decided afresh, as we have done. For the reasons

mentioned above, it is clear that Appeal No. 8 of 1966 has to be allowed, that the judgment of the learned Subordinate Judge decreeing the suit of

the plaintiffs must be set aside and that the suit must be dismissed. We accordingly dismiss the suit with costs of the defendants in the trial court and

their costs as appellants in this Court, counsel's fee being only one set in each court.

[Discussion regarding Appeal 874 of 1966½omitted: ½Ed.].