

(1972) 11 MAD CK 0008

In the Madras High Court

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

Palaniappan and Others

APPELLANT

Vs

Kuppammal and Others

RESPONDENT

Date of Decision : 30-11-1972

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2), 15
Registration Act, 1877 — Section 17, 17(1), 49

Citation : (1974) ILR (Mad) 545

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

Bench : Division Bench

Advocate : V.K. Thiruvengkatachari and T.R. Srinivasan, for the Appellant; S. Mohan, K. Ramaswami, K.R. Subramaniam, A. Sarojini Bai, S. Tyagaraja Iyer, R. Viswanathan, S.M. Subramaniam and K. Srinivasa Gopalan, for the Respondent

Judgement

Venkataraman, J.—This appeal has been filed by the Defendants 1 to 3, 5 to 10 and 26 in Original Suit 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, Malaikolundu 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 Karuppan Chettiar, the last male owner, and the estate devolved on his

two grand-daughters, Malayammal and Kuppammal. Malayammal was the daughter by the 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 and hence it was that only the two surviving grand-daughters, Malayammal and Kuppammal took the estate. Each, of course, had only a limited estate, familiarly known as the Hindu widow's estate. (Vide Mulla's Hindu Law, paragraph 174 to 176.) They could not enjoy the properties amicably together and hence a partition took place between them, evidenced by exhibits A-15 and B-15. dated 25th October 1949. Exhibit A-15 is the copy of Kuppammal, who is the first Plaintiff in the sure, and exhibit 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.

2. Exhibits 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, exhibit 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, exhibit 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 u/s 49 read with Section 17 of the Registration Act. We shall deal with that question in due course, but we may state here that under terms of exhibits A-15 and B-15, fifteen items of immovable property fell to the share of Malayammal and twenty live items fell to the Share of Kuppammal. These forty items have been listed out in the B schedule to the present plaint as items 1 to 40 Schedule A being the genealogical tree. As a matter of detail items 1 to 15 of the B schedule of the present plaint are listed out in the A schedule to exhibits A-15 and B-15 and items 16 to 40 of the plaint B schedule are listed out in the B schedule to exhibits A-15 and B-15. According to the terms of exhibits A-15 and B-15 Malayammal should not encumber or alienate any of the properties which fell to her enjoyment for any reason and, even if she did so, it would not be valid in law. The documents further recite that because Malayammal had no male or female heirs and Kuppammal had male and female heirs the properties allotted to Malayammal for her enjoyment should after her life time, be enjoyed by Kuppammal, who is the grandsons of Kuppammal (who are Plaintiffs 2

to 4).

3. The Plaintiff alleged that this was binding on Malay animal as a family arrangement, but that contrary to this arrangement, Malayammal effected

same sales of some of the properties allotted to her. She also adopted Palaniappan alias Balasubramanaim, the first Defendant, on 28th May 1953.

Her husband Kanniappa had died on 6th May. 1950. The Plaintiffs contend that the adoption is not 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, exhibit

B-1, dated 14th September 1954 and settlement deed, exhibit B-2, dated 16th April 1957, in favour of the first Defendant, Palaniappan. She took

the stand that, by virtue of Section 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 sale on 30th March, 1957 and 9th

April. 1957 (exhibits A-5 to 7) on the same footing.

4. The Plaintiff 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 exhibits 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 exhibits A-15 and B-15, the properties allotted to Malayammal and a few other properties not comprised in exhibits 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 a second Defendant, and the alienees or their legal representatives as Defendants 3 to 26.

5. The first Defendant, who was the main contesting Defendant, pleaded that, in the first place, exhibits" 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 was why Malayammal refused to consent to the registration of exhibits 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 arrangement that Malayammal took possession of items I 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, because 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 u/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.

6. This written statement was adopted by the alliance.

7. The learned Subordinate Judge (Thiru I. Doraimanikam) has recorded the following findings. Exhibits A-15 and B-15 are valid as a family arrangement and are binding on Malayammal and her alleged adopted son and under those deeds 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, 5 to 10 and 26 have preferred this appeal (Appeal No. 8 of 1966).

8. Mr. V.K. Thiruvengkatachari and Mr. T.R. Srinivasan who argued the appeal for the Appellants urge, in the first place, that exhibits 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 exhibits A-15 and B-15 Thirdly they urge that the recital in exhibits A-15 and B-15, that after the lifetime of

Malayammal the properties allotted to her for her enjoyment under exhibits A-15 and B-15 would go to kuppammal, the first Plaintiff, and her

sons, would be invalid in law, because they could 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 u/s 14(1) of the Hindu Succession Act XXX of 1956. They urge that the recital in exhibits

A-15 and B-15, that Malayammal should not encumber the property and that if she did so, it would not be valid, was nearly a re-statement of the

restricted powers of alienation of a daughter in Hindu Law that it would not. therefore, mean that Malayammal pelted 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 Section 14(1) of that Act she automatically, become a full owner. They submit that even prior to exhibits 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 exhibits A-15 and B-15 so as to make Section 14(2) applicable. In

other words, the learned Counsel urge that the Plaintiffs cannot possibly contend that u/s 14(2) the powers of Malayammal were restricted to a

bare life estate and that Section 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, exhibit B-2, and that it is superfluous to rely on the Will.

9. The, points which arise for determination may be Formulated thus:

1. Whether exhibits A-15 and B-15 are inadmissible for want of registration?

2. Whether they precluded Malayammal invoking Section 14(1) of the Hindu Succession Act XXX of 1956?

3. Whether the adoption is true and valid?

4. Whether the settlement (exhibit B-2) effected by Malayammal on the first Defendant is valid?

10. When dealing with the question of registration, it I will be convenient to set out here itself not merely the portions relevant thereto, but also the

other, portions of exhibits A-15 and B-15. Paragraph 1 recites that the two parties are Kuppammal (i) and Malayammal (ii), paragraph 2 says that

after the death of Karuppanl? Chettiar without sons in 1914, his two, widows jointly enjoyed his properties and that Malai Kolundu died in 1934,

The dead then proceeds to state as follows:

11. This may be freely translated thus:

From 1934 Kungumayee 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 into an agreement and have divided the

properties in our enjoyment in accordance with the schedules below:

Malayammal should enjoy the A schedule properties.

Kuppammal should enjoy the B schedule properties.

Malayammal should not encumber the A schedule properties for any reason, and even if she 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 life time of Malayammal,

No. 1, Kuppammal and the grandsons of Kauppammal Chettiar should enjoy the A schedule properties.

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

12. The first question which arises for determination is whether exhibits A-15 and B-15 are inadmissible for want of registration u/s 17(1)(b) of the

Registration Act Section 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, limit 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 upwards, to or in immovable property.

The law on the point is really well settled, namely, if the document itself effects an allotment of immovable property over one 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 made--in Hindu law an oral partition can be made--it does not require registration. It is enough to refer to a few decisions

which lay down this propositions: Sakkaram Krishnaji v. Madan Krishnaji ILR 5 Bom. 232. Subramanian v. Lutchmeth ILR 50 Cal. 238 (P.C.),

Bageshwari Charon Singh v. Jagarnath Kuari ILR 11 Pat. 272 (P.C.) Gojineni Bapayya Vs. Gojineni Ramakrishnayya and Others, , Muhammad

Ghousi Sahib v. jamila-Bi (1950) 1 M.L.J. 151, K. Panchapagesa Ayyar and Another Vs. K. Kalyanasundaram Ayyar and Others, , Velusami

and Another Vs. Velusami Konar and Others, . As pointed out by their Lordships of the Privy Council in Bageshwari Charan Singh v. Jagarnath

Kuari ILR 11 Pat 272 (P.C.).

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

13. Applying, this test to the terms of exhibits A-15 and B-15, we have, no doubt that the allotment of the properties; to Malayammal and

Kuppammal was made only under, exhibits A-15 and B-15. that they are the instruments 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 documents were merely evidence of that partition

which had previously taken place. Secondly, the documents say, that the A schedule properties should be enjoyed by Malayammal 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 Malayammal 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 been created.

14. 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. Velusami and Another Vs. Velusami Konar and Others, . While we are on the

question of registration, we may as well observe that, in our opinion, the clause

in exhibits A-15 and B-15, that after the life time of Malayammal the A schedule properties should go to Kuppammal and the grandsons of Karuppana Chettiar, would also required registration u/s 17(1)(b), because the contention of the Plaintiffs is that exhibits A-15 and B-15 constitute a family arrangement and that under the clause in question an immediate interest was created in favour of Kuppammal and the grandsons of Karuppana 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 exhibits 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 woman's estate or a Hindu widow's estate. (Article 176 of Mulla's Hindu Law.) They could not really prescribe for devolution of the property after their life time, 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 inoperative fall u/s 17(1)(b) and would be Inoperative for want of registration. We would presently deal With the attempt of the Plaintiff's to sustain the validity of the clause on the ground that exhibit A-15 and B-15 constitute a family arrangement, but we may point out at this stage itself feat, even if they constituted a family arrangement, the Clause would be inoperative for want of registration. This is made clear in Umrao Singh v. Lechhman Singh 38 I.A. 104, quoted in Maturi Pullaiah and Another Vs. Maturi Narasimham and Others, . In Umrao Singh v. Lachhman 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 two gentlemen, who were old friends of the family, and interested in maintaining its honour. It was plainly intended to be operative immediately and to be final and irrecoverable. It fails in effect simply because it was not registered, as required by the Registration Act III of 1877, Section 17. It

therefore void as regards immovable property.

15. We, therefore, arrive at the result that exhibits A-15 and B-15 are inadmissible for want of registration. Further as it matter of substantive law.

the clause, that after the life time 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 validity prescribe for inheritance of the properties after their life time. The Plaintiffs do not dispute this proposition, but

they seek to get over it by con-tending that exhibits A-15 and B-15 constitute a family arrangement and that if it was a family arrangement, the

clause in question would not be valid. We have already pointed out that, even assuming that exhibits A-15 and B-15 can be called a family

arrangement as the term has been understood in the decision which we shall refer to presently, it would not be valid because exhibits 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 exhibits A-15 and B-15 be called a family arrangement, as the term has been understood in the decisions so as to

validate the particular clause. The case law relating to family arrangements may be gathered from Articles 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.)., 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 an arrangement between Achamma and Bangaramma and the properties of Ramachandrudu were divided between them in 1866

Bangaramma conveyed the properties which she got by the above arrangement, to her daughter's son Subbaramayya, Achamma raised a dispute

over this, and, as a result, a settlement was effected between them by mediators in 1867, under which Achamma got absolute title to 1/3 share of

the properties given by Bangaramma to Subbaramayya and Subbaramayya took 2/3 share. After the death of Achamma and Bangaramma, the

nearest reversioner to the estate of Ramachandrudu filed a suit for setting aside the alienation made by the two widows. The alienees relied on the

arrangement of 1867 as a bona fide settlement of family disputes in respect of the estate of Ramachandrudu between his widow and

Subbaramayya, which would in law bind the reversioner, though he was not a party to it This contention was negatived by the Judicial Committee

in the following terms:

...but what is important to notice is this, that Subbaramayya had no lights to the properties except what he dervied by the gift made in his favour by

Bangaramma. Since it had not been shown that Subbaramayya had any competing title of his own in respect of the properties in dispute, there can

be no basis, in their Lordship's opinion, for a valid family settlement between the parties which would bind the reversion. In *Khunni Lal v. Gobind*

Krishna Narain 38 I.A. 87, their Lordships pointed out that the true test to apply to a transaction which is challenged by the reversioners as an

alienation not binding on them is whether the alienee derives title from the holder of the limited interest or life tenant. In 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 no antecedent title of his

own to them. In the circumstances, their Lordshipt agree with the High Court that the claim of the contesting Defendants to a two-thirds share of

the properties cannot be sustained on the basis of the arrangement of 1867.

16. This case was cited before their Lordships of the Supreme Court in *Maturi Pullaiah and Another Vs. Maturi Narasimham and Others*, for the

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

interpretation of the decision, however, was rejected by their Lordships of the Supreme Court, but fee decision was explained on the following

footing:

Relying upon this judgment it is contended that ft 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's 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. 1 (P.C.) directly applies to the present case.

By exhibit 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. 1 (P.C.). The title which

Kuppammal and her sons claim under the clause in question in exhibits 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 son with any vested rights in the A schedule properties which were allotted to Malayammal under exhibits A-15

and B-15.

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

cannot be got over by the Plaintiffs by urging that Section 17(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, exhibit B-1, dated 14th September

1956, and the settlement deed, exhibit B-2, dated 16th April 1957, in favour of the first Defendant, Palaniappan.

18. We think it pertinent to observe that the only reason stated in the

documents, exhibits A-15 and B-15, for the arrangement is that the two sisters, Malayammal, and Kuppammal were unwilling to live together. Beyond tills, 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 that properties in common. There was no

dispute on the basis of any other title different from that of a daughter of her father. Indeed, exhibits 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.

19. The decision in Pulliah v. Narasimhan AIR 1956 S.C. 1836, Krishna Beharilal Vs. Gulabchand and Others, , and S. Shanmugam Pillai v. K.

Shanmugam Pillai AIR 1972 S.C. 2029, are cases of valid family arrangement and are distinguishable. Similarly the case in Seetharama Pillai 83

L.W. 226, Penumasta Subbaraju Vs. Indukuri Narayanaraju and Others, , and Khantamoyee Debi and Others Vs. Hridayananda Bhattacharjee

and Others, , cited by Mr. M. S. Venkatarama Iyer are not applicable.

20. We have thus far arrived at the result that exhibits 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, u/s

14(1), of the Hindu Succession Act. 1956. Though the terms of Section 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

Ferriage, 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 siridhana 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 instrument or the decree, order or award prescribe a

restricted estate in such property.

The decision in *Sampathkumari v. Lakshmi Ammal* (1962) 2 M.L.J. 464, is authority for the position and that the partition effected between

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

properties respectively allotted to them under exhibits A-15 and B-15 so as to make Section 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 widows 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.

21. 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 u/s 14(2) of the Act, but he contends that

this does not mean that Section 14(1) of the Act is automatically applicable. His argument can be put thus. Section 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 exhibit A-15 and B-15, she had, along with Kuppammal, a Hindu woman's estate in the properties inherited by them from their father, on the death of Kungumayee Animal, Malayammal chose under exhibits A-15 and B-15 to reduce that estate to a bare life estate, because she undertook not to encumber the properties which were allotted to her for any reasons. But for this clause, she would have had a right to encumber the properties for legal necessity to the extent necessary, i.e. to maintain herself. But she lost even that right by the clause restricting her right to encumber or sell the properties, for any reason. The effect of that provision was to reduce the previously existing interest, known in Hindu law as a Hindu woman's estate, to that of a life estate, as it is known to us. Section 14(1) was not meant by 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.

22. The argument is, however, totally unacceptable 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 did so, it would be void, Malayammal meant to curtail her existing interest, familiarly known as a Hindu women's estate and which has been explained in the leading text books, like Mulla and Raghavachari. We agree with the contention of Mr. V.K. Thiruvengkatachari that the recital in question merely restated 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 in question Malayammal reduced her previously existing estate to a life estate, it would not deprive her of the benefit of Section 14(1). The words used in Section 14(1) are and not as a limited owner. These words are wide enough to include even a life estate, so long as the life estate was not acquired by her within the meaning of Section 14(2). To hold otherwise would mean that there is a lacuna in the Act, because Mr. M.S. Venkatarama Iyer

concedes that Section 14(2) would not apply, and, according to his contention, Section 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 Section 14(1) are any property

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 Section 14(1) (always assuming that Section

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 Section 14(1).

23. Developing the first reason we would observe that the recital in exhibits 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 restatement of the legal position that Malayammal could not alienate the properties allotted to any except wider 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

properly 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. Thimvenkatachari, the learned Counsel for the Appellant has cited two

decisions, Bibi Sahodra v. Rajang Bhadur ILR 8 Cal. 224 (P.C.) and Rama Singh v. Harakudhari Singh 47 I.C. 710. In Bibi Sahodra v. Raj Jang

Bahadur ILR 8 Cal. 224 (P.C.) the estate was claimed by one Kuldip Ram and Mainan Koer who was the widow of his cousin Mehtab Ram.

Kuldip 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 Kuldip 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 her death all the movable and immovable properties outstanding in

the name of Roy Mehtab Ram and the said Mussamat (widow) shall have 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 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 Mainan 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 life time as Kuldip Ram

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 exhibit 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 use of the words

is significant. That shows that the parties only intended to restate the law as it was.

24. 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 encumbrance that would be null and void and there will be no injury to the title of Jadunath Singh

and Palakh-dhari Singh (Plaintiffs) and their heirs and representatives.

The widow, however, elected 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 in the case of Bibi Sahodra v. Raj Jang Bahadu ILR 8 Cal. 224 (P.C.), dealing with a compromise petition exactly of the nature that we have in this case.

25. We are, therefore, of opinion that the clause in question in exhibits 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 the Privy Council in Thankur Vasonji Konnaaji v. Mussamat Chande Bibi ILR 8

Cal. 224 (P.C.) quoting Mayne's Hindu Law, Hindu Law knows nothing of estates for life or in (ail or in fee. As already pointed out, the clause in question particularly at the end, that even if she did so, it would not be valid according to law, merely restates the Hindu law that any alienation, without necessity, would not bind the reversioners, and it cannot be construed to mean that the widow could not even alienate for necessity. If

however, the clause is to be construed as one that even for necessity she should not alienate the properties, there was no consideration for such a restriction and the restriction would be invalid on that account. In fact Malayammal's subsequent conduct shows that she did not accept exhibits

A-15 and B-15 as binding upon her and in some litigations which cropped up with respect to the properties not covered by exhibits A-15 and B-

15, Malayammal and Kuppammal came to a compromise dividing those other properties equally between them leaving the validity of exhibits A-

15 and B-15 open. This has been spoken to by D.W. 1, the second Defendant, in his evidence. The documents relating to them can be grouped in

five sets. Firstly there was a suit, Original Suit No. 161 of 1950 and the concerned exhibits are exhibits B-4, A-20 and A-21 in respect of Survey

No. 557 (not included in the plaint). Secondly, there was a suit. Original Suit No. 262 of 1950, concerning item No. 41 and the concerned exhibits

are exhibits B-5, A-22. B-6, B-7 and A-1. Thirdly there was a suit Original Suit No. 321 of 1950, concerning Survey No. 555-A and the relevant

exhibits are exhibit B-8, A-23, B-9 and B-10. Fourthly, there was a suit Original

Suit No. 428 of 1950, relating to Survey No. 240, item No. 33.

Exhibits A-24 and A-25 are the relevant exhibits. There was also a suit, Original Suit No. 47 of 1954 regarding the house in Ward No. 6, door

No. 23. The concerned exhibits are exhibits B-14, B-11 and B-23.

26. Assuming, however, for the sake of argument, and argument only, that by the clause in question Malayammal reduced her interest to a life

estate and that it would be valid in law, we are of opinion that that would not deprive her of the benefit Section 14(1), so long as it could be

postulated that she did not acquire the life estate u/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 Section 14(2), and the concession is quite proper, because, exhibits A-15 and B-

15 themselves recite 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 exhibits 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 Section

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 Section 14(1) are sweeping and emphasise that the widest meaning should be given to the opening

words any property in Section 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 state 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 Section 14(1) of Act XXX of 1956, she would become full owner of the usufructuary mortgage right,

preventing any reversionary right. If, however, she had transferred the

usufructuary mortgage right in her life, Section 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 Section 14(1) are not necessarily limited to absolute right in the property, but are wide enough to include even limited right in the property, like a usufructuary mortgagee's right and a life interest.

27. 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, Section 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.

28. 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 Section

14(2) does not apply and, according to the contention of the learned Counsel, Section 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 to be the

obvious intention of the Legislature in enacting Section 14 that, where Section

14(2) does not apply, Section 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 *Eramma Vs. Verrupanna and Others*, it has been held that a female Hindu holding the property merely as a trespasser cannot have the benefit of Section 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 u/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 negated 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 u/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 Section 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 Section 14(1) sets out the various modes of acquisition of the property by 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.

29. 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 Gumkkal v. Subramania Gurukkal 85 L.W. 202,

Srimathi Unnamalai Ammal and Another Vs. Sri Vellaya Pillai alias Kalia Pillai, , and Thayammal v. Selammal (1971) 2 M.L.J. 286. 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 placed on Section 14(1). On the contrary, it seems to us that the reasons we have given are sound.

30. Mr. T.R. Srinivasan, the learned Counsel for the Appellant, urges that there is an unreported decision of Ramamurti J., in Second Appeal No.

462 of 1967 supporting the view we have taken. In that case there were three brothers, Pattabiraman, Krishnamurti and Kothandaraman. A

division had taken place between them. Pattabiraman died in 1945, leaving a widow, Dhanalakshmi, In 1955 Dhanalakshmi executed a settlement

deed (exhibit 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 the suit, out of which the second appeal arose, was instituted by Krishnamurthi, alleging that he and the

other brother, Kothandaraman, were entitled to the Property. The second Defendant contended that Dhanalakshmi's estate became enlarged to

full ownership u/s 14(1). The Plaintiff's Counsel resisted this argument by urging that by the settlement deed, Dhanalakshmi had parted with

ownership of the property. The contention of the Plaintiff was rejected and the learned Judge held that by retaining a life estate she had sufficient

ownership and was possessed of the property. He further took the view that the matter was really concluded in that sense by the decision of the

Supreme Court in Gummalapura Taggina Matada Kotturuswami Vs. Setra

Veeravva and Others, .

31. In that case the last male owner was one Kari Veerappa. He left a Will authorising his wife. Setra Veeravva (the first Defendant in the suit

which gave rise to the appeal to the Supreme Court) to adopt a son. She adopted the second Defendant, Sasalvada Kotra Basayya, on October

11, 1942. There was an ante-adoption agreement, which provided that she was to remain in possession of her husband's estate during her life time

in spite of the adoption. The reversioner brought a suit questioning the adoption. The adoption was 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 reversioner. A preliminary

objection was taken in the Supreme Court for the Respondents on the following reasoning. If the adoption was valid, the suit had necessarily to

fail. Even if the adoption was not valid the suit must fail because Veeravva had become a full owner u/s 14 of 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 Section

14(1) would not apply. According to them, it was actual physical possession of the property which mattered for the purpose of attracting Section

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 Section 14(1).

32. Ramamurti, 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 on 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 it was because of a two-fold reason: Firstly, the assumed possession with the adopted son 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.

33. The decision has, however, another aspect, as pointed out by Ramamurti 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 Malayammal was in actual physical possession of the properties allotted to her under exhibit 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 title, even according to the contention of Mr. Venkatarama Iyer.

34. Reverting to the decision of Ramamurti 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 Section 14(1) of the Act.

35. The decision of Ramanujam J., in Rangammal v. Muthuraja (1970) 2 M.L.J. 62 was cited before Ramamurti, 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 settlee and

that thereafter the property should be taken absolutely by the settlee. 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

Section 14(1) of the Act. This decision does not support the contention of Mr. Venkatarama Iyer, before us.

36. The learned Subordinate Judge has taken the view Section 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 estopped from claiming the benefit of enlargement of a Hindu

woman's estate to full ownership u/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 exhibit A-15 that after her the properties would go to Kuppammal and her sons Kuppammal her and 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.

37. Mr. M.S. Venkatarama Iyer, however, contends that even if Malayammal became a full owner u/s 14(1) of the Act the first Plaintiff would still

be entitled to succeed as the heir of Malayammal u/s 15 of the Act. He puts it in the following way. Malayammal executed a Will, exhibit 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, exhibit 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 Section 15 would come into play and that Kuppammal would succeed.

38. 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

exhibit 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 die intestate and there is no scope for Kuppammal becoming her heir u/s 15 of the Act.

39. We shall now explain why the adoption is true and valid. The adoption has been spoken to by D.W. 1 who is the second Defendant and

natural father of the adopted son. He says that Malayammal adopted his son after getting permission from the sapindas (agnates). His evidence is

amply supported by contemporaneous documentary evidence. Exhibit A-2 is the printed invitation which was, issued by Malayammal. It is

addressed to K.P. Sankaran Pillai, husband of Kuppammal the first Plaintiff and states that it had been decided by her to take in adoption

Palaniappan, son of Kodumudi T.R.M. Arumugham on Thursday, the 15th of Vaigasi of the year Vijaya (28th May 1953) between 9 a.m. and

10-30 a.m. in the house of Mariappa Pillai. The plaint refers to this invitation in paragraph 6 and states that the first Plaintiff sent a notice exhibit B-

17 (exhibit A-3 is office copy), dated 28th May 1953 to Malayammal, disputing her right to take the boy in adoption, because of the recital in

Exhibits A-15 and B-15. It is very important and will be considered presently but before that we may point out that there are some other

documents which came into existence. There is exhibit B-31, dated 27th May 1953 by the agnates giving their consent for the adoption. Then

there is the ante-adoption agreement, exhibit B-20, dated 27th May 1953, between Malayammal and Arumugam, the second Defendant, who is

the natural father of the adopted boy. Then there is the adoption deed itself, dated 28th May 1953. It will be noted that it is a registered deed and

it was actually registered on 26th September 1953.

40. Besides D.W. 1 who has given evidence about these matters, his brother,

Rathnam Pillai, who is one of the agnates who gave consent, has given evidence as D.W. 4. It is contended by Mr. M.S. Venkatarama Iyer that his evidence even in chief examination would show that the consent was given after the adoption and that in such a case the adoption would not be valid. Such a contention, however, is devoid of force. This will be clear if we turn to exhibit B-17 (exhibit A-3). It shows that Kuppammal did not challenge the adoption on the ground that the consent of the agnates had not been obtained, but merely took the stand that because Malayammal had agreed in exhibits A-15 and B-15 that after her life time the properties which had been allotted to her would devolve upon Kuppammal and her sons, the adopted son would not get those properties, though he would get the properties of Malayammal's deceased husband, Kanniappa Chettiar, or the properties of her deceased father-in-law, Ravutha Chettiar. Our point may be better understood by quoting exhibit A-3 in full:

I have heard it said that you have distributed Sweekar Upanayana Patrika (invitation for the adoption ceremony) dated 28th May 1953, for adopting Pazhaniappan, aged ten months, .elder son of T.R.M. Arumugham and adopted the said child.

There are already heirs and grandsons for the properties of the late Karuppanna Chettiar and they shall be the heirs. Your adopted son could not have any right as a grandson under the aforesaid adoption. The adoption is illegal. Your adoption is not binding on the aforesaid grandsons. You are in possession of some lands mentioned in the agreement entered into between us in accordance with the decision of the panchayatdars of the village and the said lands had been acquired by the aforesaid Karuppanna Chettiar. You are well aware of the fact that under the recitals of the aforesaid agreement the said lands shall belong to me and the grandsons of the aforesaid Karuppanna Chettiar, after your life time. The aforesaid agreement is attested by T.R. Mr. Arumugham. It appears that you have adopted Pazhaniappan, aged ten months, with the evil motive of preventing myself and the grandsons of the aforesaid Karuppanna Chettiar from enjoying after your life time the properties acquired by our father and at present remaining in your possession and increasing the properties of your adopted son and his father T.R.M. Arumugham, who is inimical

towards us and gives evil advice to you. You are well aware of the fact that the grandsons of the late Karuppanna Chettiar have been born prior to

your aforesaid adoption and after our life time they are the proper heirs to enjoy the properties acquired by our father, the late Karuppanna

Chettiar. It is just and necessary that myself and my heirs should enjoy through Court nanja lands, punja lands and tiled houses which were

acquired by our father and cash of about Rs. 5,000 remaining with you as savings and gold jewels worn by you which are worth Rs. 2,000. The

cash and jewels were obtained by you from the income of the aforesaid properties. Your false adopted son could not have the aforesaid

properties.

You are at present aged 85. The age of your illegally adopted son is ten months. The aforesaid properties were acquired by our father. The

aforesaid properties were not acquired by your late husband Kanniappa Chettiar or by your father-in-law, Ravutha Chettiar and only in respect of

such properties your adoption shall be valid. Till your life time you have the right to enjoy the aforesaid properties. You have no right to encumber

the aforesaid properties or have an adopted son. Therefore it is just and necessary that you should cancel your aforesaid false adoption and inform

me about the same within fifteen days from the date of receipt of this registered notice, failing which I would have to institute civil, criminal, or other

proceedings and in respect of the loss and court expenses, you, your adopted son and your other pro-parties are liable to be proceeded against.

41. It may be noted that in exhibit A-3 Kuppammal says that she had heard it said that Malayammal had distributed invitations for the adoption

ceremony and had actually adopted the said child Palaniappan. This letter was written on 28th May, 1953 and is the strongest possible evidence

to show that the adoption had actually taken place. It may be noted further that if really the consent of the agnates had not been obtained,

Kuppammal would have mentioned it in the forefront in exhibit A-3. On the other hand, she was prepared to concede that the adopted son would

inherit the properties of Malayammal's late husband or her late father-in-law. That means that the first Defendant had been validly adopted by

Malayammal and so far as the properties which had come to Malayammal and so far as the properties which had come to Malayammal from her

father Karuppanna Chettiar are concerned, the first Defendant would be the daughter's son of Karuppanna Chettiar and but for the contention

based on the recital in exhibits A-15 and B-15 the first Defendant would be a possible reversioner to the estate of Karuppanna Chettiar, as the law

stood in 1953 at the time of the adoption, prior to the enactment of the Hindu Succession Act, 1956.

42. The clause in exhibits A-15 and B-15 that after the death of Malayammal, the properties allotted to her would go to Kuppammal and her sons,

cannot be taken as preventing Malayammal from adopting a boy to her husband. (In *Neelangoude v. Ujjangouda.*) (1949) I. M.L.J. 94, Even if it

is possible to imply a prohibition of such an adoption, would be invalid in law as being opposed to public policy. Vide the decisions in *Shasti*

Charan Biswas v. Nakul Chandra Barua 25 M.L.J. 204, and *Mayne's Hindu Law*, page 200.

43. It is in the light of the stand taken by Kuppammal in exhibit B-17, in particular, the circumstance that she did not challenge the adoption on the

ground that there had been no consent" by the agnates, that we must appreciate the documentary evidence afforded by exhibits B-3 (deed of

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

44. The deed of consent, exhibit B-31, is as follows:

Deed of consent entered on the 27th May 1953 between Malayammal, daughter of Karuppanna Chettiar and wife of late Kanniappa Pillai,

residing at Cusba Kodumudi village, Erode taluk and the agnates coming under the line of her husband and father of the individuals signed

hereunder, as follows:

We have got full consent in your taking in adoption the minor by name Palaniappan alias Balasubra-maniam, son of T.R.M. Arumugam, aged

about one year and residing at Kodumudi for the purpose of continuance of your lineage and for the improvement of your father's brother's

properties. Only on consent given by us, you have decided to take him in adoption.

45. The first three signatories, Perianna Pillai, Chin-nappa Pillai and Palaniappa Pillai are the sons of Ravutha Pillai. According to the genealogical

tree furnished to us by Mr. T.R. Srinivasan (without any objection by Mr. M.S.

Venkatarama Iyer) the above three persons were the third, fourth and fifth sons of Ravutha Pillai. He had two other sons, the first Mariappa and the second Kanniappa, the husband of Malayammal. The first son Mariappa was the father of the second Defendant. Thus Malayammal adopted her husband's brother's son, and the consent was given by her husband's brothers, Perianna Pillai, Chinnappa Pillai and Palaniappa Pillai. K.M. Rathnam Pillai, the fourth signatory in exhibit B-31 is the brother of the second Defendant. The first signatory K. Angamuthu, is the second Defendant's maternal uncle's son. (Vide page 65 of the printed papers). The evidence of D.W. 1 shows that, except Rathnam Pillai, who has given evidence as D.W. 4, the other signatories are dead. The evidence of D.W. 4 himself is as follows:

I am D.M. 1's elder brother. I have signed exhibit B-31. It is a document written after the adoption. (The reply is given after witness is asked to read and understand the document).

Cross-examination.--My uncle is Chennappa Chettiar. He was in Kodumudi at time of adoption. It is not true that for exhibit B-31 my signature was taken in blank paper.

46. The whole edifice of the argument of Mr. M.S. Venkatarama Iyer about the invalidity of the adoption is based on this solitary piece of

evidence of D.W. 4. The contention is that, according to the above evidence, exhibit B-31 came into existence after adoption. We must, however,

remember that D.W. 4 was giving evidence on 18th October 1965, more than twelve years after the event, and his memory and understanding

must have been blurred. We repeat that, technically, one could argue on behalf of the first Defendant that even the evidence of D.W. 4, as It

stands, could only mean that exhibit B-31 was written after the date of adoption, but that it could not be construed as meaning that there was no

oral consent prior to the adoption. But we are satisfied that the evidence of D.W. 4 was mistakenly given and that the probabilities are definitely

that not merely was there oral consent to the adoption, but a written consent as evidence by exhibit B-31 must have also come into existence

before the adoption. The adoption took place openly by issuing printed invitations, one of which was sent to Kupppammal's husband. Malayammal

must have been advised by her legal advisors that such a consent of her agents

was necessary and that it would be better that the consent was taken in writing. Indeed such a consent in writing came into existence and that is exhibit B-31. It may be noted that the suggestion in cross-examination is that the signatures of the signatories were taken on a blank paper. If they were willing enough to sign in a blank paper, there would have been no difficulty in getting their consent in writing before the adoption. The probabilities are definitely that the consent in writing was taken before the adoption. The ante-adoption agreement and the adoption deed recite the fact of consent and if there was no such consent, Kuppammal, would have put it forth in the forefront in her notice, exhibit B-17 (A-3), It is therefore abundantly clear that there was consent of the agnates before the adoption. This is the only challenge put forth and, therefore, it cannot be challenged on any other ground. The judgment of the learned Subordinate Judge on this aspect is really perverse and the extent of his perversity is indicated by his interpretation of the following evidence of

D.W. 1:

The signatories to the document are dead. K.M. Rathnam Pillai is my brother.

The learned Judge observes:

In his chief examination D.W. 1 stated that the signatories to the document are dead. This reply was given without any qualification. Later he stated

that K.S. Rathnam, signatory, was his brother. This is D.W. 4.

According to the learned Subordinate Judge, the second Defendant meant at first to say that even his brother K.S. Rathnam Pillai was dead,

though he was actually living and was going to be examined as D.W. 4. To say the least, this is the limit of perversity and prejudice.

47. In view of our finding that the adoption is true and valid, the first Defendant would get the properties under exhibit B-2, even if exhibit 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 exhibit B-2 as persona designata, irrespective of the validity of the adoption. We shall quote

the relevant portion of exhibit B-2:

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

48. It is unnecessary to discuss in detail the decisions cited on the point on either side, like *Fanundra Dab Raikat v. Rajeswar 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, .

49. Mr. V.K. Thiruvengkatachari, the learned Counsel for the Appellant, drew our attention to exhibits 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. Under

exhibit B-18, dated 1st April 1952, Kuppammal and her first son executed a usufructuary mortgage over an extent of 1 acre and 45½ cents

being one-fourth of re-survey No. 240 of an extent of 5 acres 82 cents. The mortgage amount was Rs. 5,500. Under exhibit A-17, dated 29th

March 1958 an extent of 72½ cents being half of the above 1 acre 45½ cents was sold by Kuppammal and her sons to Viswanatha Gounder and

Muthusami Gounder (Mortgagees) for a sum of Rs. 4,500 Under exhibit B-16, dated 29th March 1958, an extent of 72¾ cents out of 1 acre

45-1/2 cents was sold by the minor first Defendant represented by his guardian,

the second Defendant, for a sum of Rs. 4,500. Exhibit A-17

recites that the usufructuary mortgage for Rs. 5,500 was discharged to the extent of Rs. 4,500 by the sale under exhibit A-17 and that the

executants (Kuppammal and her sons) would pay to the mortgagees the balance of Rs. 1,000. One of the vendees, Muthusami Goundar, has given

evidence as D.W. 3, that the balance of Rs. 1,000 was paid as evidenced by the receipt exhibit A-18, dated 29th March 1958. D.W. 3 further

deposes that the sale price of Rs. 4,500 under exhibit B-16 was not paid to Kuppammal, but was paid to D.W. 1 the second Defendant, (on

behalf of the minor, the first Defendant). The sale deed, exhibit B-16, has been attested by Kuppammal and her sons, and the sale deed, exhibit A-

17, has been attested by Malayammal and the second Defendant.

50. Having regard to these facts, there is some force in the submission of Mr. V.K. Thiruvengkatachari, that the adoption was recognized 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.

51. 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.

52. The eighth Defendant is one of the Appellants in Appeal No. 8 of 1966, but he has filed an independent appeal (Appeal No. 874 of 1966) in

respect of costs. According to the judgment of the learned Subordinate Judge, Defendants 1, 2 and 7 to 10 will pay the Plaintiffs' costs of suit.

The costs of the suit amount to Rs. 4,532.50. The eighth Defendant points out that he is only interested in item 42, which was valued in the plaint

only at Rs. 167.82, and that it would be unfair to make him liable for the costs of Rs. 4,532.50. He has also filed a separate application, Civil

Miscellaneous Petition No. 12855 of 1966 in Appeal No. 8 of 1966. That application was filed under the following circumstances. He was holding

a usufructuary mortgage, dated 4th November 1941, of an extent of 1 acre 37

cents in survey No. 365 (item 42 of the present plaint) from Kungumayee Ammal, the second wife of Karuppanna Chettiar, who was then in possession. Subsequently, of course, he bought half that property under exhibit A-7, dated 9th April 1957, from Malayammal and her adopted son, the first Defendant, for Rs. 1,800. He filed Civil Miscellaneous Petition No. 12855 of 1966, in Appeal No. 8 of 1966, for summoning the original usufructuary mortgage deed, raising the contention that, even in the event of the dismissal of Appeal No. 8 of 1966, his right as mortgagee under the deed of 4th November, 1941 would remain Mr. M.S. Venkatarama Iyer, the learned Counsel appearing for Kuppammal and her sons, raised no objection to this. Accordingly we passed an order on 27th August 1973 in Civil Miscellaneous Petition No. 12855 of 1966 as follows: No objection raised. Petition allowed. The document will be marked as exhibit B-31.

53. In view of our finding in Appeal No. 8 of 1966, the position of the eighth Defendant will be as follows: Without prejudice to his right as mortgagee under deed of 4th November 1941, executed by Kungumayee Ammal, he has become owner of half thereof by virtue of his purchase under exhibit A-7, dated 9th April 1957. In view of our decision in Appeal No. 8 of 1966 dismissing the Plaintiffs' suit with costs, in both the Courts, Appeal No. 874 of 1966 is allowed, but without costs.